No. 06-1322

AUG 3 - 2007

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SUPREME COURT U.S.

In the Supreme Court of the United States

FEDERAL EXPRESS CORPORATION,
Petitioner,

v.

PAUL HOLOWECKI, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

United States District Court for the
Southern District of New York (Foley Square)

1:02-cv-03355

Holowecki, et al v. Federal Express

04/30/2002	1	COMPLAINT filed. Summons issued and Notice pursuant to 28 U.S.C. 636(c). FILING FEE $ 150.00 RECEIPT # 437780. (dle) (Entered: 05/02/2002)
04/30/2002		Magistrate Judge Ronald L. Ellis is so designated. (dle) (Entered: 05/02/2002)
06/03/2002	2	WAIVER OF SERVICE of S&C returned executed as to Federal Express mailed on 5/17/02. Answer due on 7/16/02 for Federal Express. (sac) (Entered: 06/11/2002)
07/18/2002	3	RULE 1.9 CERTIFICATE filed by Federal Express. (sb) (Entered: 07/19/2002)
07/18/2002	4	NOTICE OF MOTION by Federal Express for an Order dismissing the Complaint in its entirety purs. to Rule 12(b) of the FRCP and awarding Defendant its costs, disbursements and reasonable attorneys' fees for having to bring this motion and defend this frivolous

		lawsuit . No Return Date. (sb) (Entered: 07/19/2002)
07/18/2002	5	MEMORANDUM OF LAW by Federal Express in support of [4-1] motion for an Order dismissing the Complaint in its entirety purs. to Rule 12(b) of the FRCP and awarding Defendant its costs, disbursements and reasonable attorneys' fees for having to bring this motion and defend this frivolous lawsuit. (sb) (Entered: 07/19/2002)
07/18/2002	6	AFFIRMATION of Traycee Ellen Klein by Federal Express in Support of [4-1] motion for an Order dismissing the Complaint in its entirety purs. to Rule 12(b) of the FRCP and awarding Defendant its costs, disbursements and reasonable fees for having to bring this motion and defend this frivolous lawsuit. (sb) (Entered: 07/19/2002)
08/01/2002	7	JOINT STIPULATION and ORDER EXTENDING TIME FOR RESPONSES, that the date for the plaintiff's to file their opposition to the [4-1] motion of defendant to dismiss the Complaint shall be extended to and including 8/6/02 , and, that the time for defendant's reply brief shall be extended to and including 8/20/02. (signed by Judge Lawrence M. McKenna) (tp) (Entered: 08/05/2002)

08/06/2002	8	MEMORANDUM OF LAW by Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, Nancy Thompics in opposition to [4-1] motion for an Order dismissing the Complaint in its entirety purs. to Rule 12(b) of the FRCP and awarding Defendant its costs, disbursements and reasonable attorneys' fees for having to bring this motion and defend this frivolous lawsuit. (sac) (Entered: 08/12/2002)
08/13/2002	9	NOTICE OF MOTION by Federal Express for an Order, pursuant to Local Rule 1.3(c) granting Carl K. Morrison admission to appear pro hac vice on behalf of defendant FedEx Corp. Return Date not indicated. Affirmation of Traycee Ellen Klein is attached. (tp) (Entered: 08/15/2002)
08/13/2002	10	AFFIDAVIT of Carl K. Morrison by Federal Express in support of [9-1] motion for an Order, pursuant to Local Rule 1.3(c) granting Carl K. Morrison admission to appear pro hac vice on behalf of defendant FedEx Corp. (tp) (Entered: 08/15/2002)
08/14/2002	11	NOTICE of FILING of signed Declaration of George Robertson by Paul Holowecki,

		Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, Nancy Thompics. (sb) (Entered: 08/16/2002)
08/14/2002	12	DECLARATION of George Robertson by Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, Nancy Thompics. (sb) (Entered: 08/16/2002)
08/16/2002	13	ORDER granting defendant's [9-1] motion for the admission pro hac vice of Carl K. Morrison to appear on behalf of Federal Express Corp.. (signed by Judge Lawrence M. McKenna); Copies mailed. Document sent to attorney admissions clerk. (dle) Modified on 08/19/2002 (Entered: 08/19/2002)
08/21/2002	14	REPLY MEMORANDUM by Federal Express in support re: [4-1] motion for an Order dismissing the Complaint in its entirety purs. to Rule 12(b) of the FRCP and awarding Defendant its costs, disbursements and reasonable attorneys' fees for having to bring this motion and

		defend this frivolous lawsuit. (gf) (Entered: 08/26/2002)
08/21/2002	15	SUPPLEMENTAL DECLARATION of Carl K. Morrison by Federal Express Re: [4-1] motion for an Order dismissing the Complaint in its entirety purs. to Rule 12(b) of the FRCP and awarding Defendant its costs, disbursements and reasonable attorneys' fees for having to bring this motion and defend this frivolous lawsuit. (gf) (Entered: 08/26/2002)
08/23/2002	16	Letter filed by Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, Nancy Thompics addressed to Clerk of Court from David L. Rose, dated 8/22/02, re: Defendant's pending Motion to Dismiss. (sb) (Entered: 08/28/2002)
08/29/2002	17	Memo endorsed on motion; granted. Mr. David L. Rose is admitted pro hac vice . (signed by Judge Lawrence M. McKenna); Copies mailed. (Sent to the Attorney Admissions Clerk). (kw) (Entered: 09/04/2002)
10/09/2002	18	ORDER; For the reasons set forth in this order the court grants Federal Express's [4-1] motion for an Order dismissing the

plaintiffs' ADEA claims, without leave to replead. Because the Court dismissed plaintiffs' federal claims, it declines to exercise jurisdiction over plaintiffs state law claims. Complaint dismissed. (signed by Judge Lawrence M. McKenna); Copies mailed to counsel. Document sent to judgment clerk. (dle) Modified on 10/23/2002 (Entered: 10/15/2002)

10/23/2002 19 JUDGMENT. ORDERED, ADJUDGED AND DECREED: that for the reasons stated in the Court's Memorandum and Order dtd 10/8/02, deft's motion to dismiss pltff's ADEA claims is hereby granted without leave to replead and the Court declines to exercise jurisdiction over the state law claims. (Signed by James M. Parkison, Clerk of Court); Mailed copies and notice of right to appeal. Entered On Docket: 10/25/02. (kg) (Entered: 10/25/2002)

10/23/2002 Case closed. (kg) (Entered: 11/04/2002)

10/24/2002 20 NOTICE OF MOTION by Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, Nancy Thompics to alter or amend the Memorandum and Order of 10/9/02 . No Return Date. (gq) (Entered: 10/31/2002)

10/24/2002	21	MEMORANDUM OF LAW by Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, Nancy Thompics in support of [20-1] motion to alter or amend the Memorandum and Order of 10/9/02. (gq) (Entered: 10/31/2002)
11/07/2002	22	RESPONSE by Federal Express to [20-1] motion to alter or amend the Memorandum and Order of 10/9/02 (db) (Entered: 11/14/2002)
11/19/2002	23	REPLY MEMORANDUM by Paul Holowecki, et al. in support re: [20-1] motion to alter or amend the Memorandum and Order of 10/9/02 (sac) (Entered: 11/21/2002)
05/04/2004	24	ORDER re: [20] Motion to Amend/Correct filed by Phyllis Nelson, Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, Nancy Thompics. Motion denied. So Ordered. (Signed by Judge Lawrence M. McKenna on 5/4/04) (jco,) (Entered: 05/05/2004)

06/04/2004	25	NOTICE OF APPEAL from [24] Order,. Document filed by Steven Almendarez, Paul Holowecki, Patricia Kennedy, Andy Kubicki, Donna M. Lewis, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Charles Moncalieri, Kenneth G. Mutchler, Phyllis Nelson, George Robertson, Nancy Thompics, Elizabeth Tucker. Filing fee $ 255.00, receipt number E511815. Copies of Notice of Appeal mailed to Attorney(s) of Record: Carl Morrison, Esq. (dt,) (Entered: 06/14/2004)
06/14/2004		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: [25] Notice of Appeal,. (dt,) (Entered: 06/14/2004)
06/14/2004		Transmission of Notice of Appeal to the District Judge re: [25] Notice of Appeal. (dt,) (Entered: 06/14/2004)
09/14/2004	26	USCA SCHEDULING ORDER as to [25] Notice of Appeal, filed by Phyllis Nelson, Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, Nancy Thompics USCA Case Number 04-3376-cv. Roseann B. MacKechnie, Clerk USCA. Certified: 8/30/04. Appeal Record due by 10/5/2004. Appellant Brief

		due by 10/12/2004. Appellee Brief due by 11/12/2004. (tp,) (Entered: 09/14/2004)
09/14/2004		USCA Case Number 04-3376-cv from the U.S.C.A. 2nd Cir. assigned to [25] Notice of Appeal, filed by Phyllis Nelson, Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, Nancy Thompics. (tp,) (Entered: 09/14/2004)
11/03/2004	27	Appeal Record Sent to USCA (Index). Notice that the Original index to the record on Appeal for [25] Notice of Appeal, filed by Phyllis Nelson, Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, Nancy Thompics USCA Case Number 04-3376-cv, 3 Copies of the index, Certified Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (pr,) (Entered: 11/03/2004)

* * *

United States Court of Appeals for the Second Circuit
04-3376-cv

Holowecki v. Federal Express

6/16/04	Copy of notice of appeal and district court docket entries on behalf of APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , filed. Forms C and D due on 6/18/04. [Entry date Jul 8 2004] [EA]
6/16/04	Copy of receipt re: payment of docketing fee filed on behalf of APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , <Receipt #: E-511815. [Entry date Jul 8 2004] [EA]
7/20/04	Notice of appeal acknowledgment letter from Carl Morrison received. [Entry date Jul 23 2004] [CI]
7/21/04	APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizaoeth Tucker, ET AL , defective motion to file late filed. Notice sent to party to correct by 7/30/04. [Entry date Jul 26 2004] [EA]
7/21/04	Appellant Paul Holowecki, Appellant Patricia Kennedy, Appellant Donna Lewis, et al motion extend time to file C & D filed with proof of service. [Entry date Aug 3 2004] [EA]

8/3/04 APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , defective motion to file forms C and D late CURED. [Entry date Aug 3 2004] [EA]

8/4/04 APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , Form C filed, with proof of service. [Entry date Aug 6 2004] [EA]

8/4/04 APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , Form D filed, with proof of service. [Entry date Aug 6 2004] [EA]

8/4/04 Order FILED GRANTING motion extend time to file C & D by Appellant Paul Holowecki, Appellant Patricia Kennedy, Appellant Donna Lewis, Appellant Charles Moncalieri, Appellant Phyllis Nelson, Appellant Andy Kubicki, Appellant Elizabeth Tucker, Appellant Steven Almendarez, Appellant Frank Martinez, Appellant Kelly Martinez, Appellant Kevin McQuillan, Appellant Kenneth Mutchler, Appellant George Robertson, Appellant Nancy Thompics, endorsed on motion dated 7/21/2004.(SB) Extended Form C due is 8/4/2004. Extended Form D due is 8/4/2004. [Entry date Aug 6 2004] [EA]

8/6/04 Notice to counsel in re: Granted motion to file forms C and D late. [Entry date Aug 6 2004] [EA]

8/30/04	Pre-Argument Notice and Order from Stanley A. Bass Filed. Scheduled For: 9/21/04 @3:00p.m. [Entry date Aug 31 2004] [AM]
8/30/04	Scheduling order #1 filed. Record on appeal due 10/5/2004. Appellants brief due 10/12/2004. Appellees brief due 11/12/2004. Ready week 12/20/2004. (SB) [Entry date Aug 31 2004] [AM]
9/13/04	Letter dated 9/9/04 from Carl K. Morrison, N/A for argument 1/6/05; week of 1/14/05; 2/10/05; week of 3/14/05; week of 3/21/05; 6/24/05, the weeks of July 5,9, &11, 2005, received [Entry date Sep 16 2004] [EA]
9/21/04	First pre-argument conference held by SB. [Entry date Sep 21 2004] [DP]
9/22/04	Scheduling order #2 filed. Record on appeal due 11/5/2004. Appellants brief due 11/12/2004. Appellees brief due 12/13/2004. Ready week 1/24/2005. (SB) [Entry date Sep 28 2004] [EA]
9/28/04	Notice to counsel in re: Scheduling order #2 filed. [Entry date Sep 28 2004] [EA]
11/3/04	Record on appeal index in lieu of record filed. [Entry date Nov 15 2004] [EA]
11/16/04	APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , brief RECEIVED.(Problem: pending

motion to file briefs late) [Entry date Nov 17 2004] [EA]

11/16/04 Joint appendix received. APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , [Entry date Nov 17 2004] [EA]

11/16/04 APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , brief FILED with proof of service. [Entry date Nov 18 2004] [EA]

11/16/04 APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , joint appendix filed w/pfs. [Entry date Nov 18 2004] [EA]

11/16/04 Appellant Paul Holowecki, Appellant Patricia Kennedy, Appellant Donna Lewis, et al motion file late brief filed with proof of service. [Entry date Nov 17 2004] [EA]

11/17/04 Order FILED GRANTING motion file late brief by Appellant Paul Holowecki, Appellant Patricia Kennedy, Appellant Donna Lewis, Appellant Charles Moncalieri, Appellant Phyllis Nelson, Appellant Andy Kubicki, Appellant Elizabeth Tucker, Appellant Steven Almendarez, Appellant Frank Martinez, Appellant Kelly Martinez, Appellant Kevin McQuillan, Appellant Kenneth Mutchler, Appellant George Robertson, Appellant Nancy Thompics, endorsed on motion dated 11/16/2004. IT IS HEREBY ORDERED that

	the motion by appellant to file brief and appendix two business days late on Nov. 16, 2004 is GRANTED. Appellee`s brief is due no later than Dec. 16, 2004. The appeal may be heard as early the week of Jan. 31, 2005.(TWY) [Entry date Nov 18 2004] [EA]
11/18/04	Notice to counsel in re: Granted motion to file briefs late. [Entry date Nov 18 2004] [EA]
12/14/04	Appellee Federal Express Corporation motion extended time(to file briefs) filed with proof of service. [Entry date Dec 16 2004] [EA]
12/17/04	Order FILED GRANTING motion extended time by Appellee Federal Express Corporation, endorsed on motion dated 12/14/2004 Extended Appellees brief due is 1/24/2005. Extended Ready week is 3/7/2005. (TWY) [Entry date Dec 21 2004] [EA]
12/21/04	Notice to counsel in re: Appellee's granted motion for extension of time. [Entry date Dec 21 2004] [EA]
12/22/04	Notice of appearance form on behalf of R. Kelsey , Esq., filed. (Orig in acco, copy to Calendar) [Entry date Dec 30 2004] [EA]
12/22/04	Letter dated 12/21/04 from R. Jeffrey Kelsey, Esq., N/A for argument Feb. 7-11, 2005; Feb. 26- March 6, 2005; March 7-11, 2005; and March 31-April, 2005 received [Entry date Dec 30 2004] [EA]

12/27/04	APPELLEE Federal Express Corporation, brief filed with proof of service. [Entry date Dec 30 2004] [EA]
1/30/05	APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , reply brief filed with proof of service. [Entry date May 4 2005] [EA]
3/21/05	Proposed for argument the week of 05/23/05 [Entry date Mar 21 2005] [CA]
4/8/05	Set for argument on May 24, 2005. [Entry date Apr 8 2005] [AG]
5/24/05	Case heard before KEARSE, CALABRESI, POOLER, C.JJ CD DATE: 5/24/05 [Entry date May 24 2005] [RD]
8/29/05	Record on appeal filed. (Original papers of district court.) Number of Volumes: 1. [Entry date Aug 29 2005] [SH]
3/8/06	Judgment of the district court is Reversed in part, Vacated in part, and Remanded by published signed opinion filed. (RSP) [Entry date Mar 8 2006] [EA]
3/8/06	Judgment filed. [Entry date Mar 8 2006] [EA]
3/8/06	Notice to counsel in re: Opinion filed. [Entry date Mar 8 2006] [EA]
3/20/06	APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker,

ET AL , bill of cost filed. Notice sent to party to correct by 3/27/06. (missing printers bill and certificate of service) [Entry date Mar 21 2006] [AM]

3/20/06 APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , itemized and verified bill of costs received, w/pfs. [Entry date Apr 11 2006] [EA]

3/22/06 Appellee Federal Express Corporation Petition for rehearing and petition for rehearing en banc filed with proof of service. [Entry date Mar 24 2006] [AM]

3/23/06 APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , defective document cured. Note: bill of costs corrected [Entry date Apr 11 2006] [EA]

3/24/06 Note: The OPINION PRICE is $4.00 [Entry date Mar 24 2006] [CK]

5/2/06 Order filed stating that the motion to tax costs (bill of costs construed as motion) is GRANTED. (Before: ALK, GC, RSP, C.JJ., By: TY) [Entry date May 2 2006] [AM]

5/2/06 APPELLANT Andy Kubicki, Charles Moncalieri, Donna Lewis, Elizabeth Tucker, ET AL , statement of costs taxed in the amount of $1,989.52 filed. [Entry date May 2 2006] [AM]

5/2/06	Notice to counsel in re: Orders filed 5/2/06. [Entry date May 2 2006] [AM]
10/31/06	Order FILED DENYING motion Petition for rehearing by Appellee Federal Express Corporation, endorsed on order dated 10/31/06, Order FILED DENYING motion petition for rehearing en banc by Appellee Federal Express Corporation, endorsed on order dated 10/31//2006.(AH) [Entry date Nov 1 2006] [EA]
11/1/06	Notice to counsel in re: Denied petition for rehearing and rehearing en banc. [Entry date Nov 1 2006] [EA]
11/22/06	Judgment MANDATE ISSUED. CLOSED [Entry date Nov 22 2006] [EA]
11/28/06	Acco received in records room from team. [Entry date Nov 28 2006] [DR]
11/29/06	Mandate receipt returned from the district court. [Entry date Dec 4 2006] [DR]
1/30/07	Notice from Supreme Court granting APPELLEE Federal Express Corporation, extension of time in which to file a writ of certiorari received. [Entry date Feb 2 2007] [EA]
4/9/07	Notice of filing petition for APPELLEE Federal Express Corporation, dated 4/3/07 filed. Supreme Court #: 06-1322. [Entry date Apr 11 2007] [EA]

6/7/07	Writ of Certiorari GRANTED [Entry date Jun 8 2007] [EA]
7/12/07	Letter received from Karen D. Mcneil requesting copy of oral argument tape. Receipt # 188743. Forwarded ro calendar. [Entry date Jul 12 2007] [DR]
7/20/07	Record on appeal RETURNED to lower court (1 of 1 vol.) 500 Pearl Street. [Entry date Jul 20 2007] [RL]
7/31/07	Oral argument tape mailed to Karen McNeil [Entry date Aug 1 2007] [RD]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 02 CV 3355

[Received April 30, 2002]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin MeQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Thompics, individually and on behalf of all others similarly situated,	)
Plaintiffs,	)
v.	)
Federal Express Corporation,	)
Defendant.	)

JURY DEMAND

COMPLAINT

1. This suit is brought to obtain and secure rights granted by the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 621 et seq. ("ADEA"), the New York Human Rights Law ("NYHRL"), and other state laws that prohibit discrimination on grounds of age.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, I367 and 29 U.S.C. §§ 216(b) and 628(b) and venue pursuant to 28 U.S.C. § 1391(c).

PARTIES

3. The defendant Federal Express Corporation ("Federal Express") is a corporation engaged in the transportation of packages by air and ground in New York and throughout the United States and elsewhere. The headquarters of Federal Express is in Memphis, Tennessee.

4. Federal Express employs more than 100,000 people in the United States, at more than 3,000 stations, than 45,000 of whom who drive trucks and pick up and deliver packages to and from businesses and residences in the United States. Such employees are called express couriers (hereafter "couriers").

5. Defendant is an employer within the definition and coverage of the ADEA, 29 U.S.C. § 630(b). Defendant is an employer within the definition and coverage of the New York Human Rights Law and other state laws that prohibit discrimination on grounds of age.

6. Plaintiffs are employees or former employees of Federal Express who are or were employed by Federal Express as couriers and who are 40 years of age and have had more than ten years of experience with Federal Express as couriers. Plaintiffs bring this suit on behalf of themselves and on behalf of other similarly situated Federal Express couriers.

FACTUAL ALLEGATIONS

7. At all material times, Federal Express has made written and other pledges of "Guaranteed Fair Treatment to couriers and to its other employees, and Federal Express had promised that it would provide couriers with fair and non-discriminatory treatment, without favoritism.

8. At all material times Federal Express assured couriers in writing that each of them could be assured of a job at Federal Express "if I do a good job."

9. Federal Express provides as part of its compensation to couriers and other employees a health plan that assures assistance in the payment of medical expenses, drug prescriptions and dental expenses. It promises Medical Absence Pay and Short-Term and Long Term disability benefits if the employee is sick or injured and unable to work. Federal Express provides a pension plan, and has a profit sharing plan, a retirement saving plan, and an optional saving plan. For a courier who earned $33,893 in gross pay including overtime in 1994, Federal Express estimated in a booklet distributed to the courier that the fringe benefits package for 1994 cost it $15,161.

10. By 1994, each of the plaintiffs had become an efficient full time couriers who met or exceeded Federal Express' guidelines for good production and performance by couriers. Each of them had received excellent or good performance evaluations from the time they were hired as couriers until at least that year.

11. From the time they were hired as couriers until sometime in 1994, Federal Express treated the named

plaintiffs and other similarly situated couriers who were more than 40 years old no differently than younger couriers.

12. In 1994, Federal Express began to adopt practices and policies that were intended to and did operate to reduce the number and percentage of couriers over the age of forty (hereafter frequently "older couriers") by treating them less favorably than younger couriers, both "part time" and full time. These practices and policies were intended to require and encourage the termination of the employment relationship between Federal Express and older couriers before the older couriers wished to retire. Federal Express published some of the policies throughout its establishments. Federal Express kept some of the new policies and practices clandestine, particularly those involving the targeting of older couriers for harassment, discipline and discouragement, so that some would be fired and others would leave because of the harassment and pressure.

13. In November 1994, Federal Express adopted as part of the program described in paragraph 12 above, a compensation system called "Best Practices Pays" ("BPP"). Federal Express described BPP as an incentive contest between stations meeting or exceeding station budget goals. At approximately the same time, Federal Express adopted "Minimum Acceptable Performance Standards" ("MAPS").

14. BPP and MAPS became in fact a new compensation system that Federal Express used to favor new, young couriers, and to force or encourage plaintiffs and other older, experienced couriers to leave their employment with Federal Express.

15. Under the policies and procedures adopted in 1994 and 1995, Federal Express gave managers and other supervisors

lists of older couriers who were to be targeted for increased supervision, discipline, harassment and for termination if some cause could be established. Under these policies and procedures, Federal Express gave older couriers who were injured or who otherwise required medical absences intense scrutiny and harassment and found reasons to discharge many of them from employment. Under these policies and procedures, Federal Express discharged a disproportionately high percentage of older couriers (as compared to younger couriers), and discharged an even higher percentage of older couriers who had been injured on the job or otherwise required medical absences.

16. Under the policies and practices described above, Federal Express gave young, inexperienced couriers, including so called "part time" couriers who often worked on a full time or more than full time basis, preference in starting times, in overtime assignments, and in route assignments over older, more experienced couriers, and particularly those on the target lists.

17. Prior to the new compensation system described above, Federal Express did not count (as unauthorized leave) absences from work due to temporary disability caused by job related or other injury or illness. With the adoption of the BPP and MAPS system, however, Federal Express treated all absences from work as creating an attendance problem, leading to discipline and possible discharge, including absences due to on the job injuries, other serous injuries and other medical problems beyond the control of the couriers. As part of the new system, Federal Express introduced a new "30 day/90 day Courier Route and Station" assignment policy. Under that policy, any absence of more than 30 days, including absences due to on the job injuries and other medical problems, became grounds for losing a regular route

assignment. Similarly, under that policy, any absence of more than 90 days became grounds for removal of the courier's full or part-time station slot—that is, loss of employment with Federal Express. Other devices, including so called knowledge tests, were adopted and used to discriminate against older couriers in favor of younger couriers. Under the policies described above, Federal Express treated older couriers less favorably than younger couriers, and fired older couriers more frequently and in larger proportions than younger couriers, and encouraged older couriers to leave rather than be terminated.

18. Under the BPP check-ride format stated by Federal Express, each courier was to agree with his supervisor upon a reasonable and safe number of stops per hour on the courier's route that could reasonably be achieved by the courier. At first, the number of stops was a goal which would result in enhanced pay for one pay period for one station in a geographical area, if achieved. Over time, however, Federal Express treated the goals as the minimum acceptable number of stops that older couriers were required to make to retain their positions. Under the BPP check-ride format as implemented, failure of a courier to achieve that number was grounds for a "performance reminder" and then disciplinary action up to and including termination. While older couriers were written up for infrequent and occasional failures to meet the goals, or for error, in delivering packages, younger couriers were rarely disciplined for such matters.

19. Upon information and belief, Federal Express adopted the policies and procedures described above in paragraphs 12-18 to encourage or require a disproportionate share of older couriers to leave its employment before they became eligible for their retirement. Federal Express believed that elimination of older couriers from its work force would

reduce its hourly labor costs and the costs of its health and medical benefits, retirement program, and other fringe benefits. Federal Express intended the new procedures to reduce the regular and overtime pay for older, more experienced couriers, as compared to younger part time and full time couriers, and reduce costs of the other benefits for older couriers, and to cause the disproportionate termination of employment of older couriers.

20. In 1994 and thereafter, Federal Express held meetings of managers and other supervisors throughout the United States in order to implement the new discriminatory practices and procedures. Federal Express utilized a booklet entitled "High-Velocity Culture Change: a Handbook for Managers" to train managers to implement the new program. At those meetings, the managers were advised that older couriers were more likely to sustain injuries and be absent for long periods of time, and that their presence in the work force detracted from the ability of Federal Express to compete in the marketplace.

21. At these meetings, managers were told that if any manager did not think that he or she could do what was being asked of them under the new policies, he or she should leave Federal Express or step down from a management position to a courier position. At the meetings, Federal Express also told those managers that if they could not do what was asked of them, the company would find someone who could. Under the BPP program and other policies and procedures described above, Federal Express fired or displaced older managers disproportionately and replaced them with younger managers who supported the new procedures and practices.

22. Federal Express used the BPP and Station Review Process to allocate pay away from older more experienced

couriers to newer, younger couriers, and to provide a systematic basis for terminating and intimidating the older couriers and favoring newer, younger couriers, who in fact were no more efficient or productive than the older couriers.

23. Federal Express has followed from some time in 1994 and each year thereafter a pattern or practice of employment procedures that discriminate because of age against plaintiffs and other similarly situated experienced couriers over 40 years of age, and in favor of less experienced younger couriers. The discriminatory employment practices of Federal Express include: a) redistributing overtime and regular hours from older couriers to younger couriers; b) increasing the productivity goals for older couriers, without similar increases for younger couriers; c) requiring check rides for older couriers and criticizing their performance, while letting younger couriers go without check rides, or with fewer check rides; d) writing up older couriers for alleged violations of rules, while ignoring similar or more severe violations of such rules by younger couriers; e) treating three unrelated disciplinary letters as reason for terminating couriers, rather than only three disciplinary letters concerning the same problem, and increasing the length of time that each letter stayed in the personnel file from six months to one and a half years; f) holding required meetings for older couriers, but not for younger couriers, and by advising those attending to find another job because they would not be retiring from Federal Express; g) advising some older couriers directly that it was their age that was causing their problems at Federal Express; h) changing the policy of Federal Express concerning on the job injuries, so that absenteeism from on the job injuries could result in termination for cause; i) terminating older couriers for "cause" for minor infractions or for no infractions of the rules while favoring younger employees in such matters, and j) disciplining or terminating older couriers for failure to meet

productivity goals, and then giving their route, to a younger courier with reduced stops per hour or dividing the route into two new routes each with fewer stops per hour than the route for the older courier.

24. Employment practices that discriminate against older couriers and favor younger couriers, as described above, are the prevailing pattern or practice of Federal Express in the United States; this pattern or practice is not limited to one region or district or state. On information and belief, Federal Express has continued to follow that pattern or practice to the present, and has no plans to end that pattern or practice.

25. Federal Express' pattern or practice of discriminating against older couriers and in favor of younger couriers has become the rule and not the exception at Federal Express.

26. Federal Express has engaged in employment practices that harmed plaintiffs and other similarly situated employees over that age of 40. Those practices resulted in the termination of the employment of some plaintiffs and other members of the class they represent, and by the loss of income and other benefits and by otherwise disadvantageous terms and conditions of employment to plaintiffs and the class they represent.

27. The practices described in paragraphs 12-26 above were not consistent with business necessity.

28 Defendant has since at least May, 1995 been the subject of numerous charges of age discrimination filed with the Equal Employment Opportunity Commission, including charges by couriers of the age and experience of plaintiffs.

29 Federal Express was placed on notice of the allegations that it was discriminating on the basis of age against couriers over the age of 40 pursuant to the age discriminatory practices described in paragraphs 12 through no later than May, 1995, by EEOC Charge # 151951501, fried by Jack Haneline II. Some of the Plaintiffs in this case timely notified the EEOC of the discriminatory practices by Federal Express against older couriers on grounds of age more than 60 days before this date.

30. Individuals who met all of the prerequisites to filing suit required by the ADEA and by state law filed suit alleging a pattern or practice of age discrimination in employment against older workers in Florida, on October 26, 1999, based upon charges filed with state agencies and EEOC in 1996. *Freeman et al. v. Federal Express*, No. 99-2466 (M.D. Fla.). Many of the Plaintiffs in this case attempted to join that suit in March, 2001. That suit was terminated on procedural grounds on or about March 28, 2002. As a result of the Freeman case and prior charges Federal Express has been on notice continuously since May, 1995, of the allegations of age discrimination in employment.

30. Unless restrained by order of this Court, the defendant will continue to pursue policies and practices that are the same, or similar or related to the policies and practices alleged in this Complaint. Such policies and practices have caused plaintiffs and other couriers similarly situated irreparable harm.

COUNT I
CLAIMS UNDER THE ADEA

31. Defendant purposefully engaged in the practices described above in paras. 12-25 with full knowledge that they

discrirninated against older couriers. Defendant Federal Express engaged in the discriminatory employment practices that harmed plaintiffs and other similarly situated employees with disregard for their rights under the ADEA and with disregard for the provisions of state law prohibiting discrimination because of age.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray for orders requiring the defendant Federal Express to notify current couriers over 40 years old and those older couriers who were employed by Federal Express during the time period described in this suit of the pendency of this suit and the right of persons similarly situated to the plaintiffs to participate in this suit if they consent to do so;

WHEREFORE the plaintiffs further pray for an order preliminarily and permanently enjoining defendant Federal Express and its officers, agents, employees, successors and all persons in active concert or participation with it from engaging in employment practices that discriminate on the basis of age, and specifically from:

1) treating older couriers less favorably than younger couriers in the allocation of start times, routes and overtime opportunities;

2) terminating or disciplining couriers who are absent from work because of injuries or other medical problems while they are recovering from same, unless and until it becomes clear that they are permanently disabled from performing the duties of a courier; and

3) treating older couriers less favorably than younger couriers in discipline and other terms and conditions of employment; and

4) failing or refusing to reinstate to their prior position as couriers the plaintiffs and opt in plaintiffs who were terminated or who left the employment of Federal Express because of the discriminatory practices described above, with seniority and fringe benefits in a manner that makes them whole for the loss of employment that they have suffered; and

WHEREFORE Plaintiffs further pray for:

a) an award of damages to them for the loss of income they have suffered, including the loss of fringe benefits, and loss of future earnings for those couriers who have lost their positions with Federal Express until such time as they have been reinstated or offered reinstatement;

b) pre- and post judgment interest;

c) liquidated damages to the extent permitted by law;

d) costs of litigation including attorney's fees and expert witness fees; and

e) such other relief as may be just and proper.

COUNT II

CLASS ACTION CLAIMS UNDER STATE ANTI-DISCRIMINATION LAWS

32. The allegations of paragraphs 1-31 above are hereby incorporated by reference.

CLASS ACTION ALLEGATION

33. There are hundreds of couriers employed by Federal Express who are similarly situated to the plaintiffs in this case who are employed in New York. The practices alleged in paragraphs 1-31 are unlawful under the New York Human Rights Law. Such practices are also unlawful under state law in California, Florida, Illinois, Michigan and New Jersey and in other states. Plaintiffs represent similarly situated couriers for similar claims in other states that have similar laws prohibiting age discrimination in employment, including, but not limited to, California, Michigan, New Jersey, and New York.

35. Plaintiffs have exhausted administrative remedies under the New York Human Rights Act and the Florida Civil Rights Act, and in several other states.

36. Defendant employs 45,000 couriers nationwide. Plaintiffs seek to represent all such couriers over 40 years of age who work in the states of New York, California, Michigan, New York, or New Jersey, and in other states which prohibit age discrimination in employment, and have laws similar to the ADEA and the NYHRL.

37. The claims of the named plaintiffs and of other older couriers share common questions of fact, and common questions of law under state law, including whether Federal Express intentionally engaged in a pattern or practice of age discrimination against older couriers by adopting company-wide employment practices that were intended to, and did in fact result in driving older couriers out of employment as couriers of defendant Federal Express; and whether Federal Express engaged in policies and practices

that discriminated against couriers over 40 years of age that were not required by or consistent with business necessity.

38. Plaintiffs' claims are typical of the age discrimination claims of the class they will seek to represent. Plaintiffs include current couriers who have been harassed and discriminated against in the terms and conditions of their employment, former couriers wrongfully terminated by Federal Express, and former couriers compelled to resign as couriers by Federal Express. Plaintiffs all claim that Federal Express intentionally engaged in a pattern or practice of age discrimination against older couriers by adopting company-wide plans that were intended to and did drive older couriers out of the company disproportionately. The factual issues concerning liability under the state law claims are identical or similar to the issues concerning liability under the ADEA, as are the issues concerning loss of earnings, and the willfulness of the conduct of Federal Express.

39. Plaintiffs are adequate representatives of the class they will seek to represent because they have retained experienced counsel with a multi-state practice in age discrimination matters, collective actions and other employment discrimination matters. Because plaintiffs are not and were not supervisors there are no conflicts between their interests and the class they will seek to represent.

ALLEGATIONS PERTAINING TO DAMAGES

40. As a result of Defendant's actions, Plaintiffs have suffered, suffer, and will suffer humiliation, embarrassment, mental anguish, inconvenience, damage to reputation, and injury to professional standing.

41. Defendant acted with reckless disregard for Plaintiffs' civil rights.

PRAYER FOR RELIEF

WHEREFORE the Plaintiffs further pray for an order preliminarily and permanently enjoining defendant Federal Express and its officers, agents, employees, successors and all persons in active concert or participation with it from engaging in employment practices that discriminate on the basis of age, and specifically from:

1) treating older couriers less favorably than younger couriers in the allocation of start times, routes and overtime opportunities; and

2) terminating or disciplining couriers who are absent from work because of injuries or other medical problems while they are recovering from same, unless and until it becomes clear that they are permanently disabled from performing the duties of a courier,

3) treating older couriers less favorably than younger couriers in discipline and other terms and conditions of employment; and

4) failing or refusing to reinstate to their prior position as couriers the plaintiffs and opt in plaintiffs who were terminated or who left the employment of Federal Express because of the discriminatory practices described above, with seniority and fringe benefits in a manner that makes them whole for the loss of employment that they have suffered.

WHEREFORE Plaintiffs further pray for:

a) an award of loss of income to them and all other persons similarly situated for the loss of income they have suffered, including the loss of fringe benefits, and loss of future earnings for those couriers who have lost their positions with Federal Express until such time as they have been reinstated or offered reinstatement;

b) reinstatement with seniority and other fringe benefits as necessary to make them whole for those plaintiffs and members of the affected class who were terminated or who were left their employment because of the discriminatory policies of Federal Express;

c) compensatory damages for humiliation, pain and suffering, and other non-economic injuries;

d) punitive damages to the extent permitted by law;

e) costs of litigation including attorney's fees and expert witness fees;

f) pre- and post judgment interest; and

g) such other relief as may be just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully submitted,

/s/
/s/

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 02-CV-3355 (LMM)

[Filed July 18, 2002]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Thompics, individually and on behalf of others similarly situated, Plaintiffs,	)
- against -	)
FEDERAL EXPRESS CORPORATION, Defendant.	)

NOTICE OF MOTION TO DISMISS THE COMPLAINT

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law, the Affirmation of Traycee Ellen Klein, the Declaration of Carl K. Morrison and the Exhibits attached thereto, and all prior pleadings and proceedings in this action, defendant Federal Express Corporation, by its attorneys Epstein Becker & Green, P.C., will move this court before the Honorable Lawrence M. McKenna, United States District Judge, at the United States Courthouse, 500 Pearl Street, Courtroom 15D, New York, New York for an Order (i) dismissing the Complaint in its entirety pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, (ii) awarding Defendant its costs, disbursements and reasonable attorneys'

fees for having to bring this motion and defend this frivolous lawsuit, and (iii) for such other relief as this Court deems just and proper.

Pursuant to Rule 6.1(b) of the Local Civil Rules, opposing affidavits and answering memoranda, if any, must be served within ten business days.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 02-CV-3355 (LMM)

[Filed July 18, 2002]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Thompics, individually and on behalf of others similarly situated, Plaintiffs,	)
- against -	)
FEDERAL EXPRESS CORPORATION, Defendant.	)

AFFIRMATION IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

TRAYCEE ELLEN KLEIN, being duly admitted to practice law before the United States District Court for the Southern District of New York and the Courts of the State of New York, affirms under the penalties of perjury as follows:

1. I am a partner at the law firm of Epstein Becker & Green, P.C., attorneys for defendant Federal Express Corporation ("FedEx"), and am fully familiar with the facts and circumstances of the matters set forth herein. I

respectfully submit this affirmation in support of FedEx's Motion to Dismiss the Complaint with Prejudice.

2. Attached to this affirmation is the Declaration of Carl K. Morrison, with Exhibits 1 through 11, which are the documents that FedEx relies on in support of its Motion to Dismiss the Complaint with Prejudice. These documents are referenced throughout FedEx's Memorandum of Law, which is submitted herewith.

3. Plaintiffs commenced this action pursuant to the Age Discrimination in Employment Act ("ADEA"). As demonstrated in FedEx's Memorandum of Law in Support of its Motion to Dismiss the Complaint, the plaintiffs do not have standing to bring this ADEA action. Of the fourteen named plaintiffs, only two filed charges with the Equal Employment Opportunity Commission ("EEOC"). Those two charges are untimely and cannot serve as a basis for this litigation. Since the two filing plaintiffs cannot properly commence this action, the twelve remaining plaintiffs also lack standing. Accordingly, FedEx respectfully requests that this Court grant Defendant's Motion to Dismiss the Complaint in its entirety, with prejudice.

Respectfully submitted this date of July 16, 2002.

/s/ _____

Traycee Ellen Klein (TK 2755)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 02-CV-3355 (LMM)

[Filed July 18, 2002]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Thompics, individually and on behalf of others similarly situated, Plaintiffs,	)
- against -	)
FEDERAL EXPRESS CORPORATION, Defendant.	)

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INTRODUCTION

Plaintiffs, an array of current and former couriers employed by defendant Federal Express Corporation ("FedEx") in seven different states in various regions of the country, filed this age discrimination suit on April 30, 2002 challenging business decisions implemented by FedEx eight years ago. None of the named plaintiffs filed a charge of discrimination with the Equal Employment Opportuity Commission ("EEOC") that can serve as the administrative basis necessary to bring this action, and all of the claims are time-barred. For these reasons, the Complaint should be dismissed in its entirety with prejudice.

RELEVANT FACTS

1. Each of the fourteen named plaintiffs, with the exception of Nancy Thompics,[1] is a current or former courier employed by FedEx. (Complaint ("Comp."), ¶ 6).

2. Of the thirteen named plaintiffs for whom FedEx has a record of employment, two worked in different locations in New York, four worked at two different locations in California, two worked at different locations in Pennsylvania, two worked at different locations in Illinois, one worked in New Jersey, one works in Florida, and one works in Indiana. (Declaration of Carl Morrison ("Morrison Decl."), Ex. 1).

3. Of the thirteen named plaintiffs for whom FedEx has a record of employment, five are still employed by FedEx. (Morrison Decl., Ex. 1).

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[1] FedEx has no record of an employee named Nancy Thompics (Morrison Decl., ¶ 3.)

4. Three of the named plaintiffs voluntarily resigned—one in January, 2000, one in June, 2000, and one in April, 2001. (Morrison Decl., Ex. 1).

5. Two of the named plaintiffs were terminated for violation of the FedEx Acceptable Conduct policy—one in February 2000 and one over two years later in April 2002. (Morrison Decl., Exs. 1 and 2).

6. One of the named plaintiffs was terminated for violation of the FcdEx Medical Leave of Absence policy in September 2001. (Morrison Decl., Exs. 1 and 2).

7. One of the named plaintiffs was terminated for violation of the FedEx Performance Improvement policy in March 1998. (Morrison Decl., Exs. 1 and 2),

8. One of the named plaintiffs was terminated in September 2000 for failure to return to work following a medical leave. (Morrison Decl., Exs. 1 and 2).

9. Of the named plaintiffs, only two have ever filed charges of discrimination with the EEOC against FedEx—Kevin McQuillan and George Robertson (Morrison Decl., ¶¶ 5-7).

10. Kevin McQuillan filed a charge of discrimination with the EEOC alleging age discrimination on September 11, 1998. The EEOC found no cause to believe discrimination had occurred and issued a notice of right to sue on June 11, 1999. (Morrison Decl., Ex. 3).

11. George Robertson filed a charge of discrimination with the EEOC alleging age and disability discrimination on December 1, 2000. The EEOC dismissed the charge and

issued a notice of right to sue on April 25, 2001, stating that Robertson had failed to respond to requests for information or to cooperate with the investigation of his charge. (Morrison Decl., Ex. 4).

12. FedEx has no record of charges of discrimination being filed by any of the other named plaintiffs. (Morrison Decl., 7).

ARGUMENT

1. The Standards Applicable To This Motion

Defendant's motion is brought pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds that plaintiffs have failed to demonstrate that they have met the statutory condition precedent to suit under the Age Discrimination in Employment Act ("ADEA"). In determining the sufficiency of plaintiffs' claims, the Court may consider the facts that appear on the face of the Complaint, matters of which judicial notice may be taken and documents either in plaintiffs possession or of which plaintiffs had knowledge and relied on in bringing suit. *See Brass v. American Film Technologies, Inc.*, 987 F.2d 142, 150 (2d Cir. 1993); *Cortec Indus. v. Sum Holding L.P.*, 949 F.2d 42, 47-48 (2d Cir. 1991), *cert. denied*, 112 S. Ct. 1561 (1992). As such, in determining this motion to dismiss, the Court may consider all of the exhibits referenced herein and attached to the Declaration of Carl Morrison, which is served and filed along with this Memorandum of Law and FedEx's Notice of Motion.

2. <u>The Complaint Must Be Dismissed Because None Of The Named Plaintiffs Filed A Timely Charge Of Discrimination That Can Serve As The Basis Of This Lawsuit.</u>

The ADEA requires an employee alleging age discrimination to file a charge of discrimination with the EEOC prior to bringing a lawsuit in Court. 29 U.S.C. § 626(d); *Dezaio v. New York Port Auth.*, 205 F.3d 62 (2d Cir. 2000). The purposes of the charge filing requirement are to notify the employer of the claims against it, to allow the EEOC to investigate and mediate claims of discrimination without the need for court action, and to encourage cooperation and voluntary compliance as the preferred means of achieving the goal of equal employment opportunity. *Streeter v. Joint Indus. Bd.*, 767 F. Supp. 520 (S.D.N.Y. 1991). In New York, charges must be filed within 300 days after the alleged unlawful practice occurred. *Miller v. IT&TCorp.*, 755 F.2d 20, 23 (2d Cir. 1985).

In addition to the requirement of filing a timely charge of discrimination, the ADEA establishes time limits for when a lawsuit alleging age discrimination must be brought:

> A plaintiff may commence an ADEA action in federal court: (i) as early as sixty days after filing a charge of discrimination with the EEOC, or (ii) as late as ninety days after receiving an EEOC right-to-sue notice.

Vollinger v. Merrill Lynch & Co., 198 F. Supp. 2d 433, 439 (S.D.N.Y. 2002) (*citing* 29 U.S.C. §§ 626(d)(e)). The 90-day filing requirement is akin to a statute of limitations. The Supreme Court has cautioned that the ADEA time limitations are to be strictly construed, and should not be disregarded by courts out of a vague sympathy for particular litigants. *Id.* at

440, *citing Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147 (1984). If the employee does not file the lawsuit within the 90-day time frame, his complaint is time-barred. *See Vollinger*, 198 F. Supp. 2d at 441.

The only exception to the administrative exhaustion requirements is the single filing rule, otherwise known as "piggybacking." The single filing rule, which applies in limited circumstances, permits a party who has not filed an administrative charge with the EEOC to participate in a lawsuit by piggybacking on the administrative charge of another party who has properly commenced suit. The Second Circuit has held that where the grievances in the complaint are alleged to arise throughout a large group, as is the case here, piggybacking may only occur if the underlying administrative charge gave indication that the grievance is defined broadly enough to include those who seek to piggyback on the claim. *Tolliver v. Xerox Corp.*, 918 F.2d 1052, 1057-58 (2d Cir. 1990). In the case at bar, there is no charge of discrimination that can properly serve as the basis of this lawsuit. As such, the Complaint should be dismissed.

A. The Charges Of McQuillan And Robertson Are Time-Barred

In this case, only two of the named plaintiffs, McQuillan and Robertson, filed charges of discrimination with the EEOC, and both of these charges are time-barred. According to the Complaint, McQuillan, Robertson, and the other non-filing plaintiffs, are challenging policies adopted by FedEx in 1994 and 1995. (Comp., ¶¶ 12, 13, 15). McQuillan filed his charge on September 11, 1998, nearly four years after the implementation of the policies challenged in the lawsuit. Robertson filed his charge on December 1, 2000, over six years after plaintiffs claim the policies were

implemented. Since McQuillan and Robertson did not file their EEOC charges within 300 days of the alleged unlawful practice, as is required by the ADEA, their claims are time-barred.

In addition to missing the filing deadlines by several years, McQuillan and Robertson did not file this lawsuit within 90 days of their receipt of a right to sue notice from the EEOC. McQuillan's right to sue notice was issued on June 11, 1999, nearly three years prior to the filing of this suit. Robertson's right to sue notice was issued on April 25, 2001, just over a year prior to the filing of this action. Both missed their 90-day limit by substantial periods of time. Accordingly, the claims of McQuillan and Robertson are time-barred and should be dismissed with prejudice. *Vollinger, supra.*[2]

B. <u>There Is No EEOC Charge That Can Serve As The Basis To Piggyback</u>

The twelve other plaintiffs, Holowecki, Kennedy, Lewis, Moncalieri, Nelson, Kubicki, Tucker, Almendarez, Martinez, Martinez, Mutchler, and Thompics, did not file charges of discrimination with the EEOC. Thus, they may only join and participate in this lawsuit if there is an administrative charge onto which they may piggyback. As demonstrated above, the

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[2] Because McQuillan and Robertson filed charges of their own, they are not entitled to attempt to piggyback on someone else's charge. This is because the single filing rule does not apply to employees who actually filed EEOC charges. *Levy v. United States General Accounting Office*, No. 97 Cir. 4016, 1998 U.S. Dist. LEXIS 5567 at *9-10 (S.D.N.Y. Apr. 22, 1998) ("plaintiffs who actually filed administrative charges on their own behalf cannot use the single filing rule to evade the limitations period on filing ADEA actions in federal court").

two filing plaintiffs, McQuillan and Robertson, did not timely file their EEOC charges and did not timely commence this lawsuit. As such, the non-filing plaintiffs cannot maintain this action.

Not surprisingly, since the argument would be without merit, the non-filing plaintiffs do not even allege in the Complaint that they are using the McQuillan charge or the Robertson charge as the claim upon which they attempt to piggyback. Rather, they attempt to maintain this suit by piggybacking their claims onto the charges of Jack Haneline II and Gerald Freeman, individuals who are not even parties to this lawsuit. (Comp., ¶¶ 29, 30). Whether the court considers the non-timely charges of McQuillan and Robertson, the non-party charge of Haneline II, or the *Freeman* litigation, the result is the same: the plaintiffs cannot satisfy the single filing rule. As such, they must be dismissed from this action.

As stated above, the Second Circuit has held that where the grievances in the Complaint are alleged to arise throughout a large group, as is the case here, piggybacking may only occur if the underlying administrative charge gave indication that the grievance is defined broadly enough to include those who seek to piggyback on the claim. *Tolliver*, 918 F.2d at 1057-58. The Complaint asserts that the plaintiffs worked in various localities throughout the United States and that "in 1994 Federal Express adopted practices and policies called "Best Practice Pays" and "Minimum Acceptable Performance Standards" that were intended to and did operate to reduce the number and percentages of couriers over the age of forty by treating them less favorably than younger couriers." (Comp., ¶¶ 12-18) The Complaint further alleges that under these policies and procedures: older couriers were targeted for increased supervision, discipline, harassment and termination;

older couriers who were injured or out on medical leave were harassed and scrutinized; overtime and regular hours were redistributed from older to younger couriers so that pay was allocated away from older more experienced couriers to newer, younger couriers. (Comp., ¶¶ 15, 17, 21, 22). This pattern and practice of discrimination, according to plaintiffs, was "not limited to one region or district or state." (Comp., ¶ 24).

While the widespread grievances abound in the fifteen page Complaint, there is no indication or notice of these grievances in the charges of Robertson or McQuillan. The Robertson charge states that "I [Robertson] was employed at Respondent since 1984. As a result of a work place injury I became a person with a disability. My performance has always been excellent. In August 2000, Respondent refused to allow me to take my accrued leave. I was denied additional benefits to which I was entitled. On September 8, 2000 I was terminated." (Morrison Decl., Ex. 4) Robertson believed that the aforementioned grievance constituted age and disability discrimination. *Id.*

The McQuillan charge, like the Robertson charge, complains about individual discrimination. McQuillan grieved that he was terminated in March of 1998 and that the reason given for his termination was unsatisfactory performance. The sum and substance of the remaining portion of McQuillan's charge is that FedEx had an incentive bonus plan in which the employer and the employee were supposed to "mutually agree" on performance goals, that minimum standards that were not agreed to were enforced more stringently on senior employees, and that as a result of this his employment was terminated on March 31, 1998. Additionally, McQuillan claims that he believes that he always performed his job duties in a satisfactory manner and that the reason he was terminated

was because he was 43. McQuillan, who worked in Hicksville, New York, never mentions in his charge that anyone else over the age of 40, in New York or anywhere else in the United States, has also been terminated because of this "incentive bonus plan."

It is beyond dispute that the charges of Robertson and McQuillan: do not identify the "Best Practice Pays" and "Minimum Acceptable Performance Standards," do not allege that these policies were intended to and did operate to reduce the number and percentages of couriers over the age of forty by treating them less favorably than younger couriers; do not allege that older couriers throughout the United States were targeted for increased supervision, discipline, harassment and termination; do not allege that older couriers who were injured or out on medical leave were harassed and scrutinized; and do not allege that overtime and regular hours were redistributed from older to younger couriers so that pay was allocated away from older more experienced couriers to newer, younger couriers. The charges of Robertson and McQuillan did not alert the EEOC and FedEx of the broad scope of the allegations in the Complaint, and, accordingly the single filing rule cannot apply. The non-filing plaintiffs are barred from piggybacking onto Robertson's and McQuillan's EEOC charges, even if Robertson or McQuillan had timely commenced their civil actions with this Court, which they did not. *See Tolliver*, at 1057-58.

The non-filing plaintiffs, realizing that they cannot rely on the charges of McQuillan or Robertson to avoid dismissal of this suit, instead rely on an EEOC charge that was filed in May of 1995 by Jack Haneline II and a previously filed and dismissed lawsuit in Florida entitled *Freeman et al. v. Federal Express*. (Comp.,¶¶ 29, 30). Like the McQuillan and

Robertson charges, these charges cannot be used to satisfy the single filing rule.

First, the non-filing plaintiff's attempt to piggyback onto the EEOC charge of Jack Haneline, a person who is not even a party in this action. (Comp., ¶ 29). Mr. Haneline's charge, which is not notarized or dated, cannot serve as a basis to satisfy the single filing rule. Not only is it untimely, as Haneline received a notice of right to sue in June of 1996 and never commenced a lawsuit, but the charge does not provide notice to the EEOC or FedEx of the type of class-wide allegations that are made in the Complaint. (Morrison Decl., Ex. 5).

Undoubtedly recognizing the flaw in the proposition that the Haneline charge can be used to satisfy the exhaustion requirements mandated by ADEA, plaintiffs grasp onto a lawsuit filed in Florida in 1999 - in which none of them was a party or a class member — as the jurisdictional predicate for this suit. (Comp., ¶ 30). In that matter, *Gerald Freeman, et. al v. Federal Express Corp. et. al*, Civil Action No. 99-2466-CIV-T-25B, six plaintiffs (hereinafter "the *Freeman* plaintiffs") sued FedEx in the U.S. District Court in Tampa, Florida, alleging age discrimination. (Morrison Decl., Ex. 9). None of the six *Freeman* plaintiffs is a named plaintiff in this action. No class was ever certified in the *Freeman* litigation, and the ease was dismissed without prejudice by the District Court on September 25, 2000. (Morrison Decl., ¶¶ 11-12, Ex. 9). The *Freeman* plaintiffs were granted leave to re-file the Complaint, which they failed to do.[3] (Morrison Decl.,

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[3] Rather than re-file within the time limit granted by the District Court, the *Freeman* plaintiffs elected to appeal the dismissal to the Eleventh Circuit Court of Appeals, which ultimately upheld the District Court's dismissal. *See Freeman v. Federal Express Corp.*,

¶ 11, Ex. 9.) Plaintiffs in this case ("the *Holowecki* plaintiffs") claim that many of them "attempted to join" the *Freeman* litigation in March 2001, six months after it had already been dismissed. (Comp., ¶ 30). Actually, the *Holowecki* plaintiffs' "attempt to join" the *Freeman* litigation was nothing more than an attempt by seven of the *Holowecki* plaintiffs to list themselves as parties in a proposed amended Complaint that the *Freeman* plaintiffs sought to file with the District Court on March 6, 2001. (Morrison Decl, ¶ 13, Ex. 10.) No order was ever issued granting the Freeman plaintiffs leave to amend, or allowing the *Holowecki* plaintiffs to join the *Freeman* litigation. (Morrison Decl, ¶¶ 13-14, Ex. 11.) None of the *Holowecki* plaintiffs were ever certified as members of the *Freeman* litigation.

In short, the *Holowecki* plaintiffs are arguing that unilaterally listing themselves in the caption of an unauthorized amended Complaint filed in another state by different plaintiffs in an unrelated action, that had been dismissed six months prior to their so listing themselves, satisfies their obligation to exhaust administrative remedies in this action. This is nonsense.

A similar assertion to that made by the *Holowecki* plaintiffs was flatly rejected three months ago in *Bliss v. Rochester City School Dist.*, 195 F. Supp. 2d 314 (W.D.N.Y. 2002). In *Bliss*, the plaintiff argued that she was not required

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2002 WL 187185 (11th Cir. 2002). While the District Court continued to receive various motions from the *Freeman* plaintiffs after dismissal and occasionally acted on the same, it acknowledged in its order closing the case that it was mistaken, and that all actions in the District Court after October 23, 2000, were a nullity. *See* Court's Order dated March 28, 2002, attached Morrison Decl. at Ex. 11.

to file a charge of discrimination because she could piggyback on the charges that had been filed in a different case - *Seils v. RCSD*, 199 F.R.D. 506 (W.D.N.Y. 2001).[4] In language that would be equally applicable here, the *Bliss* court rejected Plaintiff's argument:

> [P]laintiff also argues that she was not required to file any charge at all because she considers herself to be a member of a class action in the Seils case, and she attempts to "piggyback" on the charges filed in that case. Of course, this argument fails because no class was ever certified in the Seils case. Even if one had been certified, she would not [have] been able to elude the charge-filing requirements because she was not similarly situated to either of the plaintiffs in the now-dismissed Seils action.

Bliss, 196 F. Supp. 2d at 323. The arguments in favor of dismissal of the instant litigation are even stronger than those contained in *Bliss*. In this case, not only was no class ever certified in the *Freeman* litigation, the *Freeman* litigation was in fact dead in the District Court by the time the seven *Holowecki* plaintiffs even sought to join it (to the extent they can even be said to have "sought to join" the *Freeman* litigation). When adding the fact that the couriers in *Holowecki* are even less similarly situated than were the plaintiffs in *Seils* and *Bliss*, dismissal of this action is clearly warranted.

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[4] Notably, the *Seils* litigation has been filed in the same court as the *Bliss* litigation, unlike the instant case, in which plaintiffs reached over a thousand miles to a Court in Tampa, Florida, in an effort to avoid the charge filing requirement.

More importantly, had the *Freeman* litigation even been in existence at the time the seven *Holowecki* plaintiffs sought to join it, the *Holowecki* plaintiffs would have been precluded from opting in. None of the EEOC charges filed by the five of the original six *Freeman* litigants makes any claim of class-wide discrimination; rather, all of the charges assert individual discrimination, (Morrison Decl., Ex. 8). The Eleventh Circuit, the Circuit in which the *Freeman* litigation was brought, has adopted a firm rule that "[t]o serve as the basis of an ADEA class action, the underlying EEOC charge must contain allegation(s) of class-wide discrimination." *Grayson v. K Mart Corp.*, 79 F.3d 1086, 1107 (11th Cir. 1996). Accordingly, none of the charges filed by any of the *Freeman* litigants could serve as the basis for any other non-charge filing plaintiff to opt into that action. Any plaintiffs who sought to do so, including the *Holowecki* plaintiffs, would have been denied in their efforts. *Tolliver, supra.*

3. Plaintiffs' State Law Claims

In Count II of their Complaint, plaintiffs highlight the fact that they are dissimilarly situated by seeking to bring class action claims under the state anti-discrimination laws in most of the various states in which they reside - New York, California, Florida, Illinois, Michigan and New Jersey. Because plaintiffs' federal age discrimination Complaint should be dismissed as set forth herein, the Court should decline subject matter jurisdiction over the pendant state claims.[5]

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[5] It should be noted that the state law claims of the two named plaintiffs who are citizens of New York (Holowecki and McQuillan) are time-barred. The statute of limitations for claims brought under the New York Human Rights Law is three years, and

CONCLUSION

Plaintiffs have failed to comply with the established jurisdictional prerequisites to suit under the ADEA. Instead they ask this Court to allow them to rely on old charges of discrimination filed by others with no connection to them and that could not now provide a foundation for suit, even for the original parties who filed them. Such an assertion completely eviscerates the charge-filing requirement mandated by the ADEA, and the important policies of conciliation and voluntary resolution that underlie them. For these reasons, the complaint under the ADEA should be dismissed in its entirety with prejudice as to all parties. Additionally, defendant should be awarded its costs, attorneys' fees, expenses, and all other relief the Court deems proper in having to respond to this action.

Dated: New York, New York
July 16, 2002

Respectfully submitted,

By: /s/_____
Traycee Ellen Klein, Esq. (TK 2755)
Epstein Becker & Green, P.C.
250 Park Avenue
New York, New York 10177-0077
(212) 351-4500

Holowecki and McQuillan are challenging actions that were taken in 1994 and 1995. *See Murphy v. American Home Prods. Corp.*, 58 N.Y.2d 293, 307, 461 N.Y.S.2d 232, 239, 448 N.E.2d 86, 93 (1983).

Carl K. Morrison, Esq.
Senior Attorney - Litigation
Federal Express Corporation
3620 Hacks Cross Road
3rd Floor - Building B
Memphis, Tennessee 38125
(901) 434-8552

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 02-CV-3355

[Filed July 18, 2002]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Thompics, individually and on behalf of others similarly situated, Plaintiffs,	)
vs.	)
Federal Express Corporation, Defendant.	)

DECLARATION OF CARL K. MORRISON

I, Carl K. Morrison, under penalty of perjury, declare as follows:

1. I am employed as a Senior Attorney by Federal Express Corporation, which conducts business as FedEx Express ("FedEx"), at its offices in Memphis, Tennessee. I am a member in good standing of the bar of the State of Tennessee, and I will be submitting an application to appear in this action *pro haec vice* as one of the attorneys for FedEx. I present this declaration as an officer of the Court. I am a custodian of records for FedEx, and I am authorized to

provide this Declaration on its behalf. The facts stated herein are true and correct.

2. I submit this Declaration in support of FedEx's Motion to Dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), on the grounds that plaintiffs have not exhausted the administrative remedies necessary to commence a lawsuit under the Age Discrimination Employment Act and may not piggyback onto untimely actions. A copy of the Complaint is attached hereto. I reviewed the employment records maintained by FedEx for each of the fourteen named plaintiffs in this action to determine whether each was ever employed by FedEx, and if so, the geographic location where employed (or where employed at time of termination, if applicable), the position held (or held at the time of termination, if applicable), the date of termination (if applicable), the date of any charges of age discrimination filed with the Equal Employment Opportunity Commission ("EEOC") or any other agency responsible for enforcement of state or local employment discrimination laws, and the date of issuance of any Notice of Right to Sue by the EEOC with respect to those charges.

3. Based on my review of FedEx's records, FedEx does not have any record of having employed plaintiff Nancy Thompics. The chart attached hereto as Exhibit 1 accurately states the information found in the records maintained in the ordinary course of FedEx's business for the remaining fourteen plaintiffs.

4. Attached hereto as Exhibit 2 are letters or other documents confirming the termination of employment for those plaintiffs who are no longer employed by FedEx.

5. Attached as Exhibit 3 are true and correct copies of the charge of discrimination filed by plaintiff Kevin McQuillan and the subsequent right to sue notice issued by the EEOC with respect to this charge that is dated June 11, 1999. This is the only charge of age discrimination filed by McQuillan against FedEx.

6. Attached as Exhibit 4 are true and correct copies of the charge of discrimination filed by George Robertson and the subsequent right to sue notice issued by the EEOC with respect to this charge that is dated April 25, 2001. This is the only charge of age discrimination filed by Robertson against FedEx.

7. Federal Express has no record of any charges of age discrimination being filed with either the EEOC, or any other agency responsible for enforcement of state or local employment discrimination laws, by any other individual named as a plaintiff in this lawsuit.

8. Attached as Exhibit 5 are true and correct copies of the charge of discrimination filed by Jack Haneline and the subsequent right to sue notice issued by the EEOC with respect to this charge dated June 24, 1996. This is the only charge of discrimination filed by Mr. Haneline against FedEx.

9. On October 26, 1999, a lawsuit for age discrimination entitled *Gerald Freeman, et. al v. Federal Express Corp., et. al* was filed in the United States District Court for the Middle District of Florida in Tampa. Attached as Exhibit 6 is a true and correct copy of the cover page of the complaint in *Freeman*. Attached as Exhibit 7 is a true and correct copy of the Civil Docket for the *Freeman* litigation, as available on U.S. District Court Web Pacer on June 8, 2002.

10. Attached as Exhibit 8 are true and correct copies of the charges of age discrimination filed against FedEx by those plaintiffs in the *Freeman* litigation who elected to file charges, and the right to sue notices issued by the EEOC and received by FedEx for each such charge.

11. The *Freeman* litigation was dismissed by the District Court on September 25, 2000 without prejudice to re-filing it by October 23, 2000. Attached as Exhibit 9 is a true and correct copy of that Order, which was affirmed by the Eleventh Circuit Court of Appeals. *Freeman v. Federal Express Corp.*, 2002 WL 187185 (11th Cir. 2002).

12. As shown by the Civil Docket attached hereto as Exhibit 7, the Court in *Freeman* never entered any order certifying that the action could proceed on behalf of any class of FedEx employees.

13. Without leave of Court being granted, on March 6, 2001, the plaintiffs in the *Freeman* litigation attempted to file a Second Amended Complaint that proposed adding several additional plaintiffs, including some of the individuals who are plaintiffs in this action. A true and correct copy of the first page of the Second Amended Complaint in *Freeman* is attached as Exhibit 10. The District Court in *Freeman* never entered any order allowing the Amended Complaint.

14. On March 28, 2002, the District Court in *Freeman* entered an Order directing administrative closure of the case, on the grounds that its Order of September 25, 2000 dismissing the original complaint with leave to re-file it by October 23, 2000 became final on October 23, 2000, that the complaint was not re-filed by that deadline, and all proceedings thereafter in the District Court were a nullity.

Attached as Exhibit 11 is a true and correct copy of that Order. No appeal was taken of that Order.

15. I declare under penalty of perjury, under the laws of the States of Tennessee and New York, that the foregoing is true and correct. If called upon to testify, I could and would competently testify to the matters as set forth above.

Executed this 16th day of July, 2002.

/s/
Carl K. Morrison

HOLOWECKI, ET AL V. FEDERAL EXPRESS CORPORATION
U.S.D.C., SOUTHERN DISTRICT OF NEW YORK 02-cv-3355

	LAST NAME	FIRST NAME	LOCATION	TERM DATE	REASON FOR TERMINATION	DATE(S) OF CHARGE(S)	DATE(S) OF NRTS
1	Holowecki	Paul	Garden City, NY	2/8/2000	Violation of Acceptable Conduct policy	None	N/A
2	Kennedy	Patricia	Dunedin, FL	Active	N/A	None	N/A
3	Lewis	Donna	Mount Shasta, CA	9/24/2001	Violation of Medical Leave policy	None	N/A
4	Moncalieri	Charles	Lakewood, NJ	6/23/2000	Voluntary resignation	None	N/A
5	Nelson	Phyllis	Urbana, IL	1/11/2000	Voluntary resignation	None	N/A
6	Kubicki	Andy	Fullerton, CA	Active	N/A	None	N/A
7	Tucker	Elizabeth	Indianapolis, IN	Active	N/A	None	N/A
8	Almendarez	Steven	Pittsburgh, PA	4/30/2002	Violation of Acceptable Conduct policy	None	N/A
9	Martinez	Frank	Fullerton, CA	Active	N/A	None	N/A

	LAST NAME	FIRST NAME	LOCATION	TERM DATE	REASON FOR TERMINATION	DATE(S) OF CHARGE(S)	DATE(S) OF NRTS
10	Martinez	Kelly	Fullerton, CA	4/6/2001	Fail to return from Medical Leave	None	N/A
11	McQuillan	Kevin	Hicksville, NY	3/30/1998	Violation of Performance Improvement policy	9/11/1998	6/11/1999
12	Mutchler	Kenneth	Pittsburgh, PA	Active	N/A	None	N/A
13	Robertson	George	Waukegan, IL	9/7/2000	Fail to return for TRW (Temporary Return to	12/1/2000	4/25/2001
					Work assignment)		
14	Tompics*	Nancy					
	*UNKNOWN						

FedEx
Federal Express

PRISM AUTHORIZATION FORM
Correct information in this area
will GREATLY speed processing.

Complete the "bubble" sections, neatly darkening in the circles.

Employee Number (Right Justified)	First Letter of Last Name	Second Letter of Last name	Transaction Effective Date		
			Month	Day	Year
024195	H	O	02	08	00

* * *

VERIFIED
FEB. 21 2000
FL

JA 66

EMPLOYEE NO.	SOCIAL SECURITY NO.	LAST NAME	MI	FIRST NAME
24195	[REDACTED]	HOLOWECKI		PAUL

TERMINATION DATA

TRAN CODE	REHIRE	LAST DAY WORKED
371	N	02/08/00

VACATION PAY	IF YES	CURRENT NO. HRS	ACCRUED NO. HRS	EQUIP OR ADV OUTSTANDING
Y		96		

* * *

COMMENTS: Employee terminated for Acceptable Conduct Violation

/s/ 57322 2-8-00 /s/ _____ 2/9/00
Manager

/s/ 36473 2/8/00
SR MGR

PAF 9506 01

FedEx
Federal Express

INTER-OFFICE MEMORANDUM
Date: February 8, 2000
From: Nicholas Roros
Subject: *Termination Letter Acceptable Conduct*
To: Paul Holowecki
Employee # 24195
cc: Tom Hand
Nannette Malebranche
Glenn Jennings
PICC
File

Based on a thorough investigation, it has been determined that your conduct clearly violates the Acceptable Conduct Policy (2-5). Therefore, you are hereby terminated from Federal Express, effective February 8, 2000.

Should you in good faith believe this action to be unfair you have the right to proceed to Step 2 of the Guaranteed Fair Treatment Process by submitting the attached bubble form within five (5) calendar days of receipt of this notice. THE FORM MUST BE RECEIVED AT THE ADDRESS INDICATED BELOW ON OR BEFORE day five (5). Send the original document, including the bubble page and any additional documents in a large envelope (form should not be folded) to:

Federal Express Corporation
PICC/GFTP
3975 Airways
2nd Floor, Module E
Memphis, TN 38116

The information from these documents will be scanned into the GFTPP System and electronic notifications will be sent to Thomas Lynch, Regional Vice President, Kenneth A. May, Senior Vice President and Personnel. Please feel free to discuss this with your Personnel Representative, Glenn Jennings, who can be reached at 516-777-7925.

The internal mail system (COMAT) was offered to forward my GFTP complaint. I have ___ accepted/___ declined this offer. I have also been advised that PICC should only receive the bubble sheet and successive levels of management during the GFTP will receive the supporting documentation. Additionally, I solely responsible for the five (5) day receipt of this information.

Regards,

/s/_____
Nicholas Roros
Operations Manager
BPA/NY/11530

I have read and understand the above.

_____	_____	_____
Signature	Employee #	Date

Attachments: Acceptable Conduct Policy, GFTP Policy, GFTP Instruction form

Witnessed – refused to sign
/s/ 2/8/00

FedEx
Express

September 24, 2001

Donna Lewis
14712 Old Westside Road
Grenada, CA 96038

RE: TERMINATION

As you were advised in a June 27, 2001 correspondence referencing the guidelines of the Medical Leave of Absence Policy (P1-7), you had reached a permanent and stationary status and were permanently incapable of performaing the essential functions of your position as a Courier / NON DOT. You were informed that you would have ninety (90) calendar days to find a position for which you met the minimum specifications and could perform the essential functions. It was also noted in that same correspondence that if you were not successful in finding a job within that specified period of time that your employment with FedEx Express would be terminated.

On September 18, 2001 you were offered a part-time Truck Control Agent position at the RTD Facility in San Leandro, CA, but you declined that offer. Since you have not secured a position within your medical restrictions within the ninety (90) day period, your employment with FedEx Express will be terminated effective September 24, 2001. You should be receiving information regarding continuation of Health Coverage through COBRA and information on your current savings plans within a few weeks.

Donna, I wish you good luck in your future endeavors.

Should you in good faith believe this action to be unfair, you have the right to proceed to Step 1 of the Guaranteed Fair Treatment Process by submitting the attached bubble form within five (5) calendar days of receipt of this notice. The form must be received at the addres indicated below on or before day five (5). Send the original document, including the bubble page and any additional documents in a large envelope (form should not be folded).

TO: Federal Express Corporation
PICC/GFTP
3975 Airways, 2nd Floor, Module E
Memphis, TN 38116

The information on these documents will be scanned into the GFTP system and electronic notifications will be sent to the appropriate levels of management and your personnel representative. You will be notified regarding the meeting or conference call addressing your concerns. Please feel free to discuss this with your Sr. Personnel Representative, Roberta Garner, who can be reached at 503-670-4543.

Please sign this original letter as indicated below and return it to me in the enclosed self-addressed stamped envelope along with your company ID badge. I have enclosed a copy of this letter for your personal files. Signing this document does not indicate that you agree with its content, it merely indicates that you have received a copy of this document.

Sincerely,

/s/
Harry Suarer
Manager HCMP/Ops
Golden State District
Phone: 800-228-4631

_____ _____
Employe Signature Date

Attachments: FedEx Policies: P1-7, 5-5, GFTP Form
cc Roberta Garner, Sedgwick, Intracorp, Kemper

FedEx
Federal Express

PRISM AUTHORIZATION FORM
Correct information in this area
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Complete the "bubble" sections, neatly darkening in the circles.

Employee Number (Right Justified)	First Letter of Last Name	Second Letter of Last name	Transaction Effective Date		
			Month	Day	Year
016908	M	O	06	23	00

* * *

VERIFIED BY DRW 06/24/2000

EMPLOYEE NO.	SOCIAL SECURITY NO.	LAST NAME	MI	FIRST NAME
16908	[REDACTED]	MONCALIERI	A.	CHARLES

TERMINATION DATA

TRAN CODE	REHIRE	LAST DAY WORKED
304	Y	6/23/00

ELIGIBLE VACATION PAY	IF YES	CURRENT NO. HRS	ACCRUED NO. HRS	EQUIP OR ADV OUTSTANDING
yes		100		

* * *

COMMENTS: EmpLoyEE ResigNed AS OF 6/23/00, SEE AttAched letter

/s/ 154015 6/19/00
MGR
/s/ 58206 6/19/00

PAF 9506 01

Charles Moncalieri
124 Brigantine Road
Manahawkin, New Jersey 08050
June 13, 2000

Federal Express
1000 Bennett Road
Lakewood, New Jersey

Re: Employee # 16908

To Whom It May Concern:

I have been a loyal, dedicated full-time employee with Fed Ex for 19 ½ years. Through these years, I have worked at the following stations: TEB-A, GMV-A, PIE-A, CLW-A, and MJX-A in which I had enjoyed very much.

Because my wife and I had made the decision to move from Florida (CLW-A) to our home state of New Jersey, I had to transfer back part-time because their were no available full-time routes available at that time. Since that time of March, 1999, I have been awaiting a full-time position and have been informed by management that there will be no full-time routes available in the Lakewood NJX-A station in the future. I was also informed that I cannot transfer out of the station to another full-time status since there is currently a letter in my file.

Being it has been such a hardship supporting a family of four working part-time (4-5 hrs per day), I have been left no alternative but to retire as of 6/23/00.

Although I was told I am not eligible for any retirement benefits until the age of 55, I will at that time file for all benefits due me at 5/8/07.

Thank you for the opportunity of working for Fed Ex all these years. This was a company I truly enjoyed working for.

Sincerely

/s/
Charles Moncalieri

[Notary signature]
[Notary name]
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 12, 2001

FedEx
Federal Express

PRISM AUTHORIZATION FORM
Correct information in this area
will GREATLY speed processing.

Complete the "bubble" sections, neatly darkening in the circles.

Employee Number (Right Justified)	First Letter of Last Name	Second Letter of Last name	Transaction Effective Date		
			Month	Day	Year
159375	N	E	01	11	00

* * *

Approved by S.Brown 01/19/2000
Verified by J Madison 01/19/2000

JA 77

EMPLOYEE NO.	SOCIAL SECURITY NO.	LAST NAME	MI	FIRST NAME
159375	[REDACTED]	Nelson	G.	Phyllis

TERMINATION DATA

TRAN CODE	REHIRE	LAST DAY WORKED
304	Y	01/11/00

ELIGIBLE VACATION PAY	IF YES	CURRENT NO. HRS	ACCRUED NO. HRS	EQUIP OR ADV OUTSTANDING
Y		0	42	N

BUDGET CHARGE LOC.

CO	DIV	DEPT	LOC	LABOR ACCT. CODE
01	70	256	618	0520100

JOB CODE	REASON	STAFFING	POSITION NO.
R0002	0	0	188152

ORGANIZATION CODE	REASON	COMAIL ADDRESS
10134000603	E	61801-0000

REASON	BASE SALARY	PERIOD FREQ.	CHANGE AMOUNT
0	17.16	HRW	.00

COMMENTS: Voluntary resignation effective 1/11/00. 42 hours vacation due

/s/ 41960 1-11-00
MGR

* * *

PAF 9506 01

December 30, 1999
Mr. Paul Davison
FedEx
2007 Federal Way
Urbana, IL 61801

Dear Mr. Davison:

I am writing to confirm our conversation today. As we discussed, my two week noticed began on December 24, 1999 and my last day at the Champaign station will be January 7, 2000. As you know, I will be leaving the station because my husband will be taking a new position in Missoula, Montana so that we can be closer to our parents who will need more of our help in the future years.

I have appreciated all the support that you and FedEx have given me in the past, so I could visit our family during previous years.

Sincerely,

Phyllis G. Nelson
159375

FedEx
Federal Express

PRISM AUTHORIZATION FORM

Correct information in this area
will GREATLY speed processing.

Complete the "bubble" sections, neatly darkening in the circles.

Employee Number (Right Justified)	First Letter of Last Name	Second Letter of Last name	Transaction Effective Date		
			Month	Day	Year
005302	A	L	04	30	02

* * *

Verified by K Horton 5/23/2002 4:46:00 PM

JA81

EMPLOYEE NO.	SOCIAL SECURITY NO.	LAST NAME	MI	FIRST NAME
5302	[REDACTED]	Almendarez		Stephen

TERMINATION DATA

TRAN CODE	REHIRE	LAST DAY WORKED
371	N	4/24/02

ELIGIBLE VACATION PAY	IF YES	CURRENT NO. HRS	ACCRUED NO. HRS	EQUIP OR ADV OUTSTANDING
Y		8	200	

BUDGET CHARGE LOC.

CO	DIV	DEPT	LOC	LABOR ACCT. CODE
01	70	256	152	0520100

JOB CODE	REASON	STAFFING	POSITION NO.
R0088			010638

ORGANIZATION CODE	REASON	COMAIL ADDRESS
1013810207		15205-0000

* * *

COMMENTS: Steve was terminated effective 4-30-02 for violation of the Acceptable Conduct Policy (P2-5) as it related to falsification.

/s/ 141128 5-14-02
MGR

/s/ 315963 5-4-02
HR REP

/s/ 165612 5-14-02
SR MGR

PAF 9506 01

FexEx
Express

Date: April 29, 2002
From: Ty Betters

To: Steve Almendarez
CC: Terri Galloway
Kim Whigham
Denise Cooper
HRIS
File

RE: Termination

After completion of a through investigation into your alleged violation (s) of the Acceptable Conduct Policy 2-5, the decision has been made to terminate your employment with FedEx effective April 30, 2002. My decision to issue you this discipline took into consideration your statement and those of witnesses, your tenure with the Company, past performance, and disciplinary history.

It is unfortunate that this action is necessary and I wish you success in future career endeavors.

Should you in good faith believe this action is unfair, you have the right to enter the Guaranteed Fair Treatment Procedure/EEO Complaint Process by submitting the attached bubble form within five (5) calendar days of receipt of this letter. This form must be received at the address indicated below on or before day five (5). Send the original document including the bubble page, and any additional documents in a large envelope (form should not be folded). Send to:

Federal Express Corporation
HRIS/GFTP
3975 Airways Blvd., 2nd Floor, Module E
Memphis, TN 38116

The information on these documents will be scanned into the GFTP system and electronic notifications sent to appropriate levels of management and your Human Resources Representative. You will be notified regarding the meeting addressing your concerns. Please feel free to discuss this with Denise Cooper your Human Resources Representative. Denise can be reached at 412-299-3416.

My signature indicates that I have received a copy of this letter and understand its contents.

/s/ _____	4-30-02 _____
Employee	Date
/s/ _____	4-30-02 _____
Manager	Date
_____	_____
Witness	Date

Enclosed: Acceptable Conduct Policy 2-5
Guaranteed Fair Treatment Procedure/EEO Compliant Process 5-5

FedEx
Express

January 25, 2002

Kelly Martinez
3009 E. Via Palermo
Anaheim, CA 92806

Dear Kelly

On April 23, 2001, you were placed on medical leave of absence. On October 9, 2002, I advised you that your leave would expire on January 9, 2002 and that you could apply for positions for which you qualified and could perform the essential functions, with or without reasonable accommodation.

Based on the most recent medical information you have provided me you are unable to return to your job as a Courier/DOT at FUL and have not secured another position within the Company. Therefore, in accordance with the Leave of Absence (Medical) Policy (P1-8) it is necessary to terminate your employment since you have been unable to return from your leave of absence.

In accordance with the Termination Policy, P4-90, if you have the following items in your possession, they must be returned to the Company. I have enclosed a pre-paid self-addressed ONL envelope for your convenience.

- Employee ID
- Keys
- Entry car, if applicable
- Payment for outstanding travel advances

- Repayment of bad checks written to the Company
- Credit association loans
- Credit cards for the following
  - Gasoline
  - Air travel
  - American Express
  - Telephone
  - Car rental
- Equipment issued in employee's name (e.g., uniform, rain gear)
- Company manuals, other Company property, etc.

You will be receiving additional information from the Company about any eligibility you may have for the continuation of your Group Health Benefits.

Should you in good faith believe this action to be unfair you have the right to proceed to Step 1 of the Guaranteed Fair Treatment Process, by submitting the attached bubble form within five (5) days of receipt of this notice. THE FORM MUST BE RECEIVED AT THE ADDRESS INDICATED BELOW ON OR BEFORE DAY FIVE (5). Send the original documents in the enclosed ONL envelope (form should not be folded) to:

Federal Express Corporation
PICC/GFTP
3975 Airways, 2nd Floor, Module E
Memphis, TN 38116

The information from these documents will be scanned into the GFTP System and electronic notifications will be sent to appropriate levels of management and your personnel representative. You will be notified regarding the meeting or conference call addressing your concern. Please feel free to

discuss this with your Personnel Representative, Barbara DiFrancia who can be reached at (949) 862-4506.

Sincerely,

/s/
Paul Coleman
HCMP Manager
Southern California District

cc: Barbara DeFrancia

Attachments: Policies P1-8, P5-5, P4-90
ONL envelopes with airbills

FedEx
Federal Express

PRISM AUTHORIZATION FORM

Correct information in this area
will GREATLY speed processing.

Complete the "bubble" sections, neatly darkening in the circles.

Employee Number (Right Justified)	First Letter of Last Name	Second Letter of Last name	Transaction Effective Date		
			Month	Day	Year
032792	M	C	03	30	98

* * *

EMPLOYEE NO.	SOCIAL SECURITY NO.	LAST NAME	MI	FIRST NAME
32792	[REDACTED]	McQuillan		Kevin

TERMINATION DATA

TRAN CODE	REHIRE	LAST DAY WORKED
373	N	3/27/98

ELIGIBLE VACATION PAY	IF YES	CURRENT NO. HRS	ACCRUED NO. HRS	EQUIP OR ADV OUTSTANDING
Y		8	128	N

BUDGET CHARGE LOC.

CO	DIV	DEPT	LOC	LABOR ACCT. CODE
01	40	256	425	0520100

JOB CODE	REASON	STAFFING	POSITION NO.
R0002	0	0	053356

ORGANIZATION CODE	REASON	COMAIL ADDRESS
10133A0403	0	11801-0000

* * *

COMMENTS: Termination due to performance improvement 3 letters in 3 months.

/s/	39736	SM	3/30/98	/s/	213261	3/30/98
/s/	22370	Mgr	3/30/98	/s/	77435	4/2/98

Fed
Federal Express

VERIFIED Apr. 10 1998 S. WARD
32792

Date: March 30, 1998 To: Kevin McQuillan

From: Frank Cantreva 2237C c: B. Rogers
N. Malebranche
G. Jennings
PICC
File

Subject: **Warning Letter/**
Termination
Violation Policy #2-5
Acceptable Conduct

This warning Letter is being issued to you as a result of the Customer Complaint and follow-up letter dated 3/24/98 and 3/26/98 respectively.

On March 24, 1998 Autoliners, a long time Customer of Federal express called to complain about your behavior towards the females at this location. His complaint was "Kevin behaves inappropriately to female employees by making sexual innuendoes." We also have a letter dated Marched 26, 1998, from an employee of Autoliners, outlining your alleged remarks more specifically as disrespectful and inappropriate. This is in direct violation of Policy 5-55 (attached) Sexual Harassment. This type of behavior is not accepted at Federal Express.

Kevin, with this warning Letter, you have three (3) current letters on file, which according to Policy 2-50 Performance Improvement your employment with Federal Express as of 3/30/98 is terminated.

Should you in Good faith believe this action to be unfair, you have the right to proceed to Step 1 of the Guaranteed Fair Treatment Process. Attached is the GFT Instructions for terminated employees. You must submit your original document, including the Bubble Page and any additional documents within five (5) calendar days. You must submit your packet to the address indicated in this packet. You will be notified regarding the meeting on Conference Call addressing your concerns. Please feel free to discuss this with your Senior Personnel Representative, Glenn Jennings, who can be reached at (516) 777-7900.

Respectfully,

/s/
Frank Cantreva
Operations Manager
DPKA/NY/11801
KMcQ term

I have read and understand the above and received copies of applicable Policies.

Signature	Empl.#	Date

Witnessed by Bill Rogers 3/30/98

FedEx
Federal Express

September 7, 2000

George Robertson
36869 N. Bernice Drive
Lake Villa, IL 60046

Dear George:

On June 19, 2000, you were sent a letter stating that you were to report for TRW on June 20, 2000 in which you failed to report. On August 8, 2000, you were sent another letter stating that you needed to report for TRW on August 14, 2000. You responded to that letter stating that you wanted to request your personal days, floating holidays and vacation time but failed to report for TRW. On August 25, 2000, you were sent a third letter requesting you to report for TRW on August 30, 2000, in which you again failed to report, also in that letter I stated that you needed to report back to work and submit your request in writing. As I stated in my letters, failure to comply with the conditions of your medical leave means that you are on an unauthorized leave of absence and subject to termination. After consulting with Personnel and Legal and under the guidelines of P1-68, I have no choice but to terminate your employment effective September 7, 2000 for violation of P1-68 for failure to return for TRW.

Should you in good faith believe this action to be unfair you have the right to proceed to Step 1 of the Guaranteed Fair Treatment Process, by submitting the attached bubble form within five (5) days of receipt of this notice. THE FORM MUST BE RECEIVED AT THE ADDRESS INDICATED

BELOW ON OR BEFORE DAY FIVE (5). Send the original documents in a large envelope (form should not be folded) to:

Federal Express Corporation
PICC/GFTP
3975 Airways, 2nd Floor, Module E
Memphis, TN 38116

The information from these documents will be scanned into the GFTP System and electronic notifications will be sent to appropriate levels of management and your personnel representative. You will be notified regarding the meeting or conference call addressing your concern. Please feel free to discuss this with your Personnel Representative, Sharron Smith, who can be reached at 312-651-2363.

Sincerely,

/s/
Brenda Gilliam
HCMP Manager
Lake Shore District
312-651-2362

cc: Sharron Smith
Kemper National Services

Attachments: P1-6, P5-5, P1-68

EEOC FORM 5

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY ☐ FEPA
☒EEOC

CHARGE NUMBER 160982761

_____ and EEOC
State or local Agency, if any

NAME *(Indicate Mr., Ms., Mrs.)*
Mr. Kevin Mcquillan

HOME TELEPHONE *(Include Area Code)*
(516) 264-0904

STREET ADDRESS CITY, STATE AND ZIP CODE
132 Merrick Road, #5, Amityville, NY 11701

DATE OF BIRTH
[REDACTED]/55

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more than one list below.)*

NAME
Federal Express

NUMBER OF EMPLOYEES, MEMBERS
Cat D (501 +)

TELEPHONE *(Include Area Code)*
(516) 933-1732

STREET ADDRESS CITY, STATE AND ZIP CODE
201 West John Street, Hicksville, NY 11801

COUNTY
059

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*

* * *

☒ AGE

DATE DISCRIMINATION TOOK PLACE

EARLIEST	*LATEST*
03/31/98	03/31/98

☐ CONTINUING ACTION

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s)):*

I began employment with the above named Respondent on February 8, 1984. I was last employed as a Courier. On March 31, 1998, my employment was subsequently terminated.

The reason given for my termination by my immediate supervisor was unsatisfactory performance. My employer initiated a program which was supposed to be an incentive bonus plan but became a minimum standard for job security.

In this program, the employer set performance goals which were supposed to be mutually agreed upon but were not, ostensibly to reward employees who hit or exceeded set goals. Initially this was so but eventually became minimum standards which were not agreed to and which were enforced more stringently on senior employees. I had always performed my job duties in a satisfactory manner.

I believe I was discriminated against because of my age (43) in violation of the Age Discrimination in Employment Act of 1967, as amende

* * *

I declare under penalty of perjury that the foregoing is true and correct.

9/11/98 /s/
Date Charging Party *(Signature)*

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

/s/
SUBSCRIBED AND SWORN BEFORE ME THIS DATE
(Day, month, and year)

9-11-98 /s/
[Notary seal]

EEOC Form 161

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Mr. Kevin Mcquillan
132 Merrick Road, Apt. #5
Amityville, NY 11701

From: Equal Employment Opportunity Commission
New York District Office
7 World Trade Center, 18th Floor
New York, New York 10048

* * *

Charge No.	EEOC Representative	Telephone No.
160-982761	Legal Unit	(212) 748-8500

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

* * *

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

* * *

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS from your receipt of this Notice; otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

/s/ JUN 11 1999
Spencer H. Lewis, Jr., District Director *(Date Mailed)*

Enclosure(s)

cc: Carolyn Robertson
Federal Express
Sr. EEO Specialist, Employee Relations Dept.
Delivery Code: 2240
2600 Nonconnah, Suite 100
Memphis, TN 38132

EEOC FORM 5

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY ☐ FEPA
☒EEOC

CHARGE NUMBER 210A11349

Illinois Dept. of Human Rights and EEOC
State or local Agency, if any

NAME *(Indicate Mr., Ms., Mrs.)*
Mr. George Robertson

HOME TELEPHONE *(Include Area Code)*
(847) 265-6017

STREET ADDRESS CITY, STATE AND ZIP CODE
36869 N. Bernice Drive, Lake Villa, IL 60046

DATE OF BIRTH
[Redacted]/1960

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more than one list below.)*

NAME
Federal Express

NUMBER OF EMPLOYEES, MEMBERS
Cat D (501 +)

TELEPHONE *(Include Area Code)*
(901) 922-5215

STREET ADDRESS CITY, STATE AND ZIP CODE
2600 Nonconnah, Suite 100, Memphis, TN 38132

COUNTY
157

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*

* * *

☒ AGE
☒ DISABILITY

DATE DISCRIMINATION TOOK PLACE
EARLIEST *LATEST*
09/07/2000
☐ CONTINUING ACTION

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s)):*

I was employed at Respondent since approximately 1984. As a result of a work place injury I became a person with a disability. My performance has always been excellent. In August 2000, Respondent refused to allow me to take my accrued leave. I was denied additional benefits to which I was entitled. On September 8, 2000 I was terminated.

I believe I have been discriminated against because of my age, 40 (date of birth [REDACTED]1960), in violation of the Age Discrimination in Employment Act of 1967, as amended, and because of my disability, in violation of the Americans with Disabilities Act of 1990.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

12/1/2000 /s/
Date Charging Party *(Signature)*

* * *

EEOC Form 161

Equal Employment Opportunity Commission

DISMISSAL AND NOTICE OF RIGHTS

To: George Robertson
2521 Country Hill Court
Lake Carol, IL 61046

7099 3400 0006 7301 6056

From: Equal Employment Opportunity Com0435ion
500 West Madison Street
Suite 2800
Chicago, Illinois 60661-2511

* * *

Charge No.	EEOC Representative	Telephone No.
210A11349	Maura Caroselli, Investigator	(312) 886-4824

(See the additional information attached to this form.)

YOUR CHARGE IS DISMISSED FOR THE FOLLOWING REASON:

* * *

[X] You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conferences, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had more

than 30 days in which to respond to our final written request.

* * *

- NOTICE OF SUIT RIGHTS -

[X] Title VII and/or the Americans with Disabilities Act: This is your NOTICE OF RIGHT TO SUE, which terminates the Commission's processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in a court of competent jurisdiction. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice; otherwise your right to sue is lost.

[X] Age discrimination in Employment Act: This is your NOTICE OF DISMISSAL OR TERMINATION, which terminates processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in a court of competent jurisdiction. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice; otherwise your right to sue is lost.

* * *

On behalf of the Commission

4-25-01 /s/
John P. Rowe, District Director

Enclosures
Information Sheet

Copy of Charge
cc: Respondents Federal Express

EEOC FORM 5

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY ☐ FEPA
☒EEOC

CHARGE NUMBER 151951501

_____ and EEOC
State or local Agency, if any

NAME *(Indicate Mr., Ms., Mrs.)*
Mr. Jack H. Haneline II

HOME TELEPHONE *(Include Area Code)*
(813) 855-4953

STREET ADDRESS CITY, STATE AND ZIP CODE
8518 Manassas Road, Tampa, FL 33635

DATE OF BIRTH
[Redacted]/49

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more than one list below.)*

NAME
Federal Express

NUMBER OF EMPLOYEES, MEMBERS
Cat D (501 +)

TELEPHONE *(Include Area Code)*
(813) 736-6727

STREET ADDRESS CITY, STATE AND ZIP CODE
1881 Main Street, Dunedin, FL 34698

COUNTY
057

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*

* * *

☒ RACE
☒ AGE

DATE DISCRIMINATION TOOK PLACE

EARLIEST	*LATEST*
11/11/94	11/18/94

☐ CONTINUING ACTION

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s)):*

PERSONAL HARM:

On November 11, 1994 I was suspended. On November 18, 1994 I was discharged.

RESPONDENT'S REASON FOR ADVERSE ACTION:

Mark Month, Manager, advised me that I was being suspended pending an on-going investigation. Mark Month told me that I was discharged for misconduct.

STATEMENT OF DISCRIMINATION:

Although there was not proof that I was guilty, I was given a more severe discipline than two younger Couriers and one Black Courier. I believe I was discriminated against because of my race, White, and my age, 44, in violation of Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended.

☒I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

/s/

Date Charging Party *(Signature)*

* * *

EEOC Form 161

Equal Employment Opportunity Commission

DISMISSAL AND NOTICE OF RIGHTS

To: Jack H. Haneline, II
8518 Manassas Road
Tampa, Florida 33635

From: U.S. Equal Employment Opportunity Commission
Tampa Area Office
501 East Polk Street, Suite 1020
Tampa, Florida 33602

* * *

Charge No.	EEOC Representative	Telephone No.
151951501	Jasper H. Crawford, Enforcement Unit 1, Investigator	(813) 228-2310

(See the additional information attached to this form.)

YOUR CHARGE IS DISMISSED FOR THE FOLLOWING REASON:

* * *

[X] The Commission issues the following determination: Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other

issues that might be construed as having been raised by this charge.

* * *

– NOTICE OF SUIT RIGHTS –

[X] Title VII and/or the Americans with Disabilities Act: This is your NOTICE OF RIGHT TO SUE, which terminates the Commission's processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in U.S. District Court. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice; otherwise your right to sue is lost.

[X] Age Discrimination in Employment Act: This is your NOTICE OF DISMISSAL OR TERMINATION, which terminated processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in U.S. District Court. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice; otherwise your right to sue is lost.

* * *

On behalf of the Commission

June 24, 1996 — /s/ signature illegible
(Date Mailed) — J. D. Packwood, Jr. Area Director

Encls (1)
Copy of Charge

cc:
Federal Express

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 99-2466-CIV-T-25B

[Received Oct. 26, 1999]

Gerald D. Freeman, Plaintiff, *Pro Se*)
)
Vincent Maccia; Plaintiff, *Pro Se*)
)
Ronald Clausnitzer, Plaintiff, *Pro Se*)
)
Wayne C. Tate, Plaintiff, *Pro Se*)
)
Kathy Creamer, Plaintiff, *Pro Se*)
)
William G. Krolman, Plaintiff, *Pro Se*, et al.)
)
vs.)
)
Federal Express Corporation, Mary Alice Taylor,)
Marco Chan, Scott Bunker, Susan Martin, Teri)
Galloway, Ardy Piazza, Lou Fusco, Susan Matlock,)
et al.)
Defendants)

Plaintiffs, Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy Creamer, William G. Krolman, and other similarly situated couriers sues the Defendants, Federal Express Corporation and others and alleges:

INTRODUCTION

1. This is a proceeding for injunctive relief and damages to redress the deprivation of rights secured to the Plaintiffs and others by section 7(b), 29 U.S.C. § 626(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 et seq. ("ADEA"),

* * *

U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 99-CV-2466

Freeman, et al v. Federal Express Corp, et al

Filed: 10/26/99
Assigned to: Judge James S. Moody, Jr.
Jury demand: Plaintiff
Demand: $0,000
Nature of Suit: 442
Lead Docket: None
Jurisdiction: Federal Question
Dkt # in other court: None
Cause: 42:2000 Job Discrimination (Age)

DOCKET PROCEEDINGS

Date	#	Docket Entry
10/26/99	1	CLASS ACTION COMPLAINT and demand for jury trial filed (jlg) [Entry date 10/27/99] [Edit date 10/27/99]
10/26/99	--	FILING FEE PAID. (Filing Fee $ 150.00 Receipt # T001398) (jlg) [Entry date 10/27/99]
10/26/99	--	MAGISTRATE JUDGE CASE ASSIGNMENT Magistrate assigned: Thomas G. Wilson (jlg) [Entry date 10/27/99]

11/01/99	2	NOTICE of designation under Local Rule 3.05 - TRACK 2. (ctc) (smb) (Entry date 11/02/99)
11/12/99	--	SUMMONS (ES) issued for Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock. Consent(s) issued. (smb) [Entry date 11/15/99]
12/20/99	3	RETURN OF SERVICE executed as to Marco Chan 12/8/99. Answer due on 12/28/99 for Marco Chan. (smb) [Entry date 12/21/99]
12/20/99	4	RETURN OF SERVICE executed as to Scott Bunker 12/8/99. Answer due on 12/28/99 for Scott Bunker (smb) [Entry date 12/21/99]
12/20/99	5	RETURN OF SERVICE executed as to Susan Matlock 12/8/99. Answer due on 12/28/99 for Susan Matlock (smb) [Entry date 12/21/99]
12/20/99	6	RETURN OF SERVICE executed as to Susan Martin 12/8/99. Answer due on 12/28/99 for Susan Martin. (smb) [Entry date 12/21/99]
12/20/99	7	RETURN OF SERVICE executed as to Mary Alice Taylor 12/8/99. Answer due on 12/28/99 for Mary Alice Taylor (smb) [Entry date 12/21/99]

12/20/99	8	RETURN OF SERVICE executed as to Ardy Piazza 12/8/99. Answer due on 12/28/99 for Ardy Piazza (smb) [Entry date 12/21/99]
12/20/99	9	RETURN OF SERVICE executed as to Teri Galloway 12/8/99. Answer due on 12/28/99 for Teri Galloway (smb) (Entry date 12/21/99]
12/20/99	10	RETURN OF SERVICE executed as to Lou Fusco 12/8/99. Answer due on 12/28/99 for Lou Fusco (smb) [Entry date 12/21/99]
12/20/99	11	RETURN OF SERVICE executed as to Federal Express Corp. 12/8/99. Answer due on 12/28/99 for Federal Express Corp. (smb) [Entry date 12/21/99]
12/20/99	12	CERTIFICATE OF SERVICE of [2-1] track 2 notice by Gerald D. Freeman. (smb) [Entry date 12/21/99]
1/05/00	13	Return of service unexecuted as to Mary Alice (McKee) Taylor. (smb) [Entry date 01/06/00]
1/05/00	--	SUMMONS(ES) issued for Mary Alice Taylor. Consent(s) issued. (smb) [Entry date 01/06/00]
1/18/00	14	RETURN OF SERVICE executed as to Mary Alice Taylor 1/7/00. Answer due on 1/27/00 for Mary Alice Taylor (smb) [Entry date 01/19/00]

1/18/00 15 CERTIFICATE OF SERVICE of [2-1] track 2 notice (as to Mary Alice Taylor) by Gerald D. Freeman (smb) [Entry date 01/19/00]

1/19/00 16 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman for leave to file memo in excess of twenty pages Note: This documents stricken and returned pursuant to order [19-1] entered 1/27/00. (smb) [Entry date 01/20/00] [Edit date 01/28/00]

1/27/00 17 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman to certify as a nationwide class action suit under Fair Labor Standard Act. Document stricken per order [23-1] dated 2/3/00. (smb) [Entry date 01/27/00] [Edit date 02/03/00]

1/27/00 18 MEMORANDUM by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman in support of [17-1] motion to certify as a nationwide class action suit under Fair Labor Standard Act. Document stricken per order [23-1] dated 2/3/00. (smb) [Entry date 01/27/00] [Edit date 02/03/00]

1/27/00 19 ORDER striking [16-1] motion for leave to file memo in excess of twenty pages. The clerk is directed to return said document to the submitting party with a copy of this order.

(Signed by Judge Henry L. Adams Jr.) ctc (jnb) [Entry date 01/28/00]

1/31/00 20 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman for leave to reconsider [19-1] order (smb) [Entry date 02/01/00]

1/31/00 21 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman for leave to amend the pleadings ([1-1] complaint); replacement pages attached. (smb) [Entry date 02/01/00]

1/31/00 22 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman to reconsider leave to file memorandum in excess of twenty pages (smb) [Entry date 02/01/00]

2/03/00 23 ORDER striking [17-1] motion to certify as a nationwide class action suit under Fair Labor Standard Act, striking [18-1] support memorandum and the Clerk is directed to return said documents to the submitting party with a copy of this order. (Signed by Judge Henry L. Adams Jr.) ctc (smb) [Entry date 02/03/00]

2/07/00 24 NOTICE of filing original copy of Letter to Sue by Kathy L. Creamer; letter attached. (smb) [Entry date 02/08/00]

2/07/00 25 MOTION by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to dismiss plaintiff's complaint, or, alternatively, to strike [1-1] complaint in toto (smb) [Entry date 02/08/00]

2/07/00 26 MEMORANDUM by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock in support of [25-1] motion to dismiss plaintiff's complaint, [25-2] motion to strike [1-1] complaint in toto. (smb) [Entry date 02/08/00]

2/10/00 27 APPLICATION of Non-Resident Counsel and Designation of Local Counsel as to Federal Express Corp . Local Counsel: Cathy Beveridge. Non-Resident Counsel: Thomas W. Murrey. (smb) [Entry date 02/11/00]

2/10/00 28 APPLICATION of Non-Resident Counsel and Designation of Local Counsel as to Federal Express Corp. Local Counsel: Cathy Beveridge. Non-Resident Counsel: James R. Mulroy II. (smb) [Entry date 02/11/00]

2/14/00 29 ORDER striking [20-1] motion for leave to reconsider [19-1] order, striking [21-1] motion for leave to amend the pleadings ([1-1] complaint), striking [22-1] motion to reconsider leave to file memorandum in excess of twenty pages. The Clerk is directed to return said documents to the sumbitting party

with a copy of this order. (Signed by Judge Henry L. Adams Jr.) ctc (smb) [Entry date 02/15/00]

2/14/00 30 MOTION by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock with memorandum in support to strike exhibits submitted in support of plaintiffs' motion to certify class (smb) [Entry date 02/15/00]

2/14/00 31 MEMORANDUM by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock in opposition to [17-1] motion to certify as a nationwide class action suit under Fair Labor Standard Act (smb) [Entry date 02/15/00]

2/18/00 32 ORDER granting [27-1] counsel designation. (Signed by Judge Henry L. Adams Jr.) ctc (smb)

2/18/00 33 ORDER granting [28-1] counsel designation. (Signed by Judge Henry L. Adams Jr.) ctc (smb)

2/22/00 34 NOTICE of filing original copy of limited power of attorney by Wayne C. Tate; attachment. (smb) [Entry date 02/23/00]

2/22/00 35 RESPONSE by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer to [25-1] motion to dismiss plaintiff's

complaint, [25-2] motion to strike [1-1] complaint in toto. (smb) [Entry date 02/23/00]

2/22/00 36 MEMORANDUM by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer in opposition (in support of answer) to [25-1] motion to dismiss plaintiff's complaint, [25-2] motion to strike [1-1] complaint in toto (smb) [Entry date 02/23/00]

2/25/00 37 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman for reconsideration of [29-1] order (smb) [Entry date 02/28/00]

2/28/00 38 MOTION (APPLICATION) by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer for default judgment against Federal Express Corp, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock (smb)

3/02/00 39 NOTICE of filing change of address by Ronald Clausnitzer. (smb) [Entry date 03/03/00]

3/06/00 40 MOTION (APPLICATION) by Wayne C. Tate, William G. Krolman for default judgment against Federal Express Corp, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock (smb) [Entry date 03/07/00]

3/13/00 41 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [37-1] motion for reconsideration of [29-1] order ruling on motion to amend the pleadings. (smb) [Entry date 03/14/00]

3/13/00 42 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [40-1] motion for default judgment against Federal Express Corp, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock, [38-1] motion for default judgment against Federal Express Corp, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock. (smb) [Entry date 03/14/00]

3/17/00 43 APPLICATION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman for default judgment against Mary Alice Taylor (smb) [Entry date 03/20/00]

3/17/00 44 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [42-1] application for order of default judgment. (smb) [Entry date 03/20/00]

3/31/00 45 RESPONSE by Mary Alice Taylor to [43-1] motion for default judgment against Mary Alice Taylor. (smb) [Entry date 04/03/00]

4/03/00 46 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman for reconsideration of [17-1] motion to certify as a nationwide class action suit under Fair Labor Standard Act (smb) [Entry date 04/04/00]

4/03/00 47 MEMORANDUM by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L Creamer, William G. Krolman in support of [46-1] motion for reconsideration of [17-1] motion to certify as a nationwide class action suit under Fair Labor Standard Act. (smb) [Entry date 04/04/00]

4/18/00 48 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman with memorandum in support for sanctions (rm) [Entry date 04/19/00]

5/01/00 49 ORDER TO SHOW cause for lack of filing case management report within the time prescribed: Response due on 5/18/00 for Susan Matlock, for Lou Fusco, for Ardy Piazza, for Teri Galloway, for Susan Martin, for Scott Bunker, for Marco Chan, for Mary Alice Taylor, for Federal Express Corp, for William G. Krolman, for Kathy L. Creamer, for Wayne C. Tate, for Ronald Clausnitzer, for Vincent J. Maccia, for Gerald D. Freeman

(Signed by Judge Henry L. Adams Jr.) ctc (smb) [Entry date 05/02/00]

5/04/00 50 NOTICE of non-service of plaitniffs' motion for sanctions under Rule 11(b) and plaintiffs' motion and memorandum in support of plaintiffs' motion to rconsider motion to certify as a nationswide class action suit by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock (smb) [Entry date 05/05/00]

5/08/00 -- Order to show cause [49-1] addressed to Ronald Clausnitzer returned marked as insufficient address. (smb) [Entry date 05/09/00]

5/10/00 51 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [46-1] motion for reconsideration of [17-1] motion to certify as a nationwide class action suit under Fair Labor Standard Act (smb) [Entry date 05/11/00]

5/10/00 52 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [48-1] motion for sanctions. (smb) [Entry date 05/11/00]

5/11/00 53 RESPONSE to show cause order filed by plaintiff Gerald D. Freeman, plaintiff Vincent

J. Maccia, plaintiff Ronald Clausnitzer, plaintiff Wayne C. Tate, plaintiff Kathy L. Creamer, plaintiff William G. Krolman (jlh) [Entry date 05/12/00]

5/15/00 54 RESPONSE to show cause order filed by defendant Federal Express Corp, defendant Mary Alice Taylor, defendant Marco Chan, defendant Scott Bunker, defendant Susan Martin, defendant Teri Galloway, defendant Ardy Piazza, defendant Lou Fusco, defendant Susan Matlock (smb) [Entry date 05/16/00]

5/17/00 55 MOTION (REQUEST) by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman for a preliminary injunction (smb) [Entry date 05/18/00]

5/22/00 56 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman with memorandum in support for sanctions (smb) [Entry date 05/23/00]

5/22/00 57 ORDER discharging [49-1] order; parties shall file a case Management Report within 15 days (Signed by Judge Henry L. Adams Jr.) ctc (ejw) [Entry date 05/23/00]

5/25/00 58 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman to

strike [52-1] motion response, [51-1] motion response (smb) [Entry date 05/26/00]

6/01/00 59 NOTICE OF CASE REASSIGNMENT to the Honorable Judge James D. Whittemore. ctc (mrh)

6/05/00 60 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [55-1] request for a preliminary injunction. (smb) [Entry date 06/06/00]

6/05/00 61 NOTICE of non-service of plaintiffs' motion for sanctions and plaintiffs' motion to strike, or alternative, to stricken defendants' 5/10/00 untimely and falsely premised responses by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock (smb) [Entry date 06/06/00]

6/07/00 -- Order [57-1] addressed to Ronald Claunitzer returned marked: Return to sender, insufficient address. (smb) [Entry date 06/08/00]

6/07/00 62 CASE MANAGEMENT REPORT (smb) [Entry date 06/08/00]

6/12/00 63 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [56-1] motion for sanctions. (smb) [Entry date 06/13/00]

6/12/00 64 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [58-1] motion to strike [52-1] motion response, [51-1] motion response. (smb) [Entry date 06/13/00]

6/15/00 65 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman to redesignate case (smb) [Entry date 06/16/00]

6/22/00 66 ORDER denying [65-1] motion to redesignate case without prejudice pending determination of class certification by the Court. (Signed by Judge James D. Whittemore) ctc (smb)

7/10/00 67 NOTICE of filing corrected exhibit A to defendants' notice of non-service of plaintiff's motion for sanctions and plaintiffs' motion to strike, or alternatively, to stricken defendants' 5/10/00 untimely and falsely premised responses by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock; exhibit attached. (smb) [Entry date 07/11/00]

7/18/00 68 THIRD MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman with memorandum in support (third) for sanctions under Rule 11(b)(1)(2)(3)(4) (smb) [Entry date 07/19/00]

7/18/00 69 NOTICE of filing exhibit by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman; attachment. (smb) [Entry date 07/19/00]

7/27/00 70 ADDENDUM NOTICE of filing by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman. (smb) [Entry date 07/28/00]

7/27/00 71 FOURTH MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman with memorandum in support (fourth) for sanctions (smb) [Entry date 07/28/00]

8/03/00 72 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [68-1] third motion for sanctions under Rule 11(b)(1)(2)(3)(4) (ag) [Entry date 08/04/00]

8/08/00 73 NOTICE OF CASE REASSIGNMENT to the Honorable Judge James S. Moody Jr. ctc (eec)

8/10/00 74 AMENDED NOTICE OF CASE REASSIGNMENT to the Honorable Judge James S. Moody Jr. ctc (eec)

8/10/00 75 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker,

Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [71-1] motion (fourth) for sanctions (smb) [Entry date 08/11/00]

8/14/00 76 FIFTH MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman (fifth) for sanctions under Rule 11(b)(1)(2)(3)(4) (smb) [Entry date 08/15/00]

8/28/00 77 MOTION by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to extend time to repond to motions for sanctions, and for hearing (jlh) Modified on 09/07/00 [Entry date 08/29/00] [Edit date 09/07/00]

9/07/00 -- MOTION(S) no longer referred: [77-1] motion to extend time to repond to motions for sanctions, [77-2] motion for hearing (aw)

9/11/00 78 SIXTH MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer and William G. Krolman with memorandum in support (sixth) for sanctions under Rule 11(b)(1)(2)(3)(4) . (sak) [Entry date 09/12/00]

9/11/00 79 RESPONSE by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer and William G. Krolman to [77-1] motion to extend time to repond to motions for sanctions and [77-2]

motion for hearing. (sak) [Entry date 09/12/00]

9/11/00 80 NOTICE of filing Local Rule 3.01(g) certification of facts later discovered but not subsequently withdrawn by Defendants' counsel by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer and William G. Krolman. (sak) [Entry date 09/12/00]

9/13/00 81 SEVENTH MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer and William G. Krolman with memorandum in support (seventh) for sanctions under Rule 11(b)(1)(2)(3)(4). (sak) [Entry date 09/14/00]

9/25/00 82 ORDER that the complaint against all individual defendants is dismissed with prejudice, the remainder of the complaint relating to Federal Express Corporation is dismissed without prejudice and the plaintiffs are given 20 days in which to file an amended complaint set amended complaint deadline at 10/23/00 for William G. Krolman, for Kathy L. Creamer, for Wayne C. for Ronald Clausnitzer, for Vincent J. Maccia, for Gerald Freeman denying as moot [78-1] sixth motion for sanctions under Rule 11(b)(1)(2)(3)(4), denying as moot [77-1] motion to extend time to repond to motions for sanctions, denying as moot [77-2] motion for hearing, denying as moot [76-1] fifth motion for sanctions under Rule 11(b)(1)(2)(3)(4), denying as moot [71-1]

fourth motion for sanctions, denying as moot [68-1] third motion for sanctions under Rule 11(b)(1)(2)(3)(4), denying as moot [58-1] motion to strike [52-1] motion response, [51-1] motion response, denying as moot [56-1] motion for sanctions, denying as moot [55-1] motion for a preliminary injunction, denying as moot [48-1] motion for sanctions, denying as moot [46-1] motion for reconsideration of [17-1] motion to certify as a nationwide class action suit under Fair Labor Standard Act, denying as moot [43-1] motion for default judgment against Mary Alice Taylor, denying as moot [40-1] motion for default judgment against Federal Express Corp, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock, denying as moot [38-1] motion for default judgment against Federal Express Corp, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock, denying as moot [37-1] motion for reconsideration of [29-1] order, denying as moot [30-1] motion to strike exhibits submitted in support of plaintiffs' motion to certify class (Signed by Judge James S. Moody Jr.) ctc (rm) [Entry date 09/26/00]

10/10/00 83 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C. Tate, Kathy L. Creamer, William G. Krolman for reconsideration of [82-1] order set amended complaint deadline at 10/23/00 for William G. Krolman, for Kathy L. Creamer, for Wayne C. for Ronald Clausnitzer, for Vincent J.

Maccia, for Gerald Freeman , or alternatively to certify such three questions for appeal before the Court of Appeals (jlh)

10/13/00 85 NOTICE of filing corrections to request for reconsideration of order dated 09/25/00 or, in the alternative, to certify such 3 questions for appeal by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer (crb) [Entry date 10/16/00]

10/16/00 84 ORDER denying [83-1] motion for reconsideration of [82-1] order set amended complaint deadline at 10/23/00 for William G. Krolman, for Kathy L. Creamer, for Wayne C. for Ronald Clausnitzer, for Vincent J. Maccia, for Gerald Freeman, denying [83-2] motion to certify such three questions for appeal before the Court of Appeals (Signed by Judge James S. Moody Jr.) ctc (jlh)

10/16/00 86 MOTION by Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan with memorandum in support for certification , and for entry of final judgment under Federal Rules civil Procedure Rule 54(b) (wlb) [Entry date 10/17/00]

10/20/00 87 NOTICE of voluntary dismissal without prejudice by Wayne C. Tate. (sak) [Entry date 10/23/00]

10/24/00 88 RESPONSE by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Wayne C.

Tate, Kathy L. Creamer, William G. Krolman to [86-1] motion for certification, [86-2] motion for entry of final judgment under Federal Rules civil Procedure Rule 54(b) (wlb) [Entry date 10/25/00]

10/24/00 89 NOTICE OF INTERLOCUTORY APPEAL by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer re: [84-1] order, [82-1] order set amended complaint deadline at 10/23/00 for William G. Krolman, for Kathy L. Creamer, for Wayne C. for Ronald Clausnitzer, for Vincent J. Maccia, for Gerald Freeman. Filing fee $ 105.00; Receipt # T006944 information form due 11/7/00 ctc (plk) [Entry date 10/26/00] [Edit date 02/22/2001]

10/26/00 -- TRANSMITTAL of initial appeal package to USCA consisting of certified copies of notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable, re: [89-1] appeal. Transcript information form sent. (plk)

11/02/00 -- NOTICE dated 10/30/00 assigning 11th Circuit case number re: [89-1] appeal. USCA case #: 00-15705-E (crs) [Entry date 11/03/00]

11/03/00 -- CORRESPONDENCE from appellant as to receiving back his 25 copies of notice of appeal. He indicated that the copies have been sent certified mail to the all defendants. Letter placed on left side of file folder. (crs) [Entry date 11/06/00]

11/06/00 91 ORDER denying [81-1] motion (seventh) for sanctions under Rule 11(b)(1)(2)(3)(4) (Signed by Judge James S. Moody Jr.) ctc (jlh) [Entry date 11/07/00]

11/07/00 90 TRANSCRIPT INFORMATION FORM filed re: [89-1] appeal; transcript not requested; Certificate of readiness due 11/21/00. USCA # 00-15705-E (crs)

11/13/00 92 AMENDED NOTICE OF INTERLOCUTORY APPEAL by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer re: [82-1] order set amended complaint deadline at 10/23/00; [84-1] order denying motion for reconsideration; [91-1] order denying motion (seventh) for sanctions under Rule 11 (b)(1)(2)(3)(4) ctc (crs) [Entry date 11/14/00] [Edit date 02/22/2001]

11/13/00 -- TRANSMITTAL of initial appeal package to USCA consisting of certified copies of amended notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable, re: [92-1] appeal. USCA #00-15705-E (crs) [Entry date 11/14/00]

11/22/00 -- ACKNOWLEDGMENT by USCA of receiving copy of notice of amended appeal on 11/17/00 re: [92-1] appeal. USCA # 00-15705-E (crs) [Entry date 11/24/00]

11/27/00 93 ORDER TO SHOW cause why action should not be dismissed for failure to prosecute:

Response due on 12/11/00 for William G. Krolman, for Kathy L. Creamer, for Ronald Clausnitzer, for Vincent J. Maccia, for Gerald D. Freeman. Failure to file an amended complaint or establish satisfactory cause shall result in this action being dismissed without further notice. (Signed by Judge James S. Moody Jr.) ctc (ch)

11/27/00 -- DEADLINE updated pursuant to [93-1] order; reset amended complaint deadline at 12/11/00 for William G. Krolman, for Kathy L. Creamer, for Ronald Clausnitzer, for Vincent J. Maccia, for Gerald D. Freeman (ch)

11/29/00 94 RESPONSE to show cause order filed by plaintiff Gerald D. Freeman, plaintiff Vincent J. Maccia, plaintiff Ronald Clausnitzer, plaintiff Kathy L. Creamer, plaintiff William G. Krolman (ch) [Entry date 11/30/00]

11/29/00 95 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman to stay pending appeal (ch) [Entry date 11/30/00]

12/07/00 -- TRANSMITTAL to USCA re: [92-1] appeal forwarding original response to plaintiff's motion, filed in District Court in error. USCA # 00-15705-E (Clerk B. Wiegman USCA, instructed Clerk C. Slemmer to forward the response to the 11th Circuit) (crs)

12/07/00 -- TRANSMITTAL to USCA re: forwarding original response to plaintiff's motion filed in

District Court in error. USCA # 00-15705-E (cdm) [Entry date 12/12/00]

12/11/00 96 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [95-1] motion to stay pending appeal (ch) [Entry date 12/12/00]

12/12/00 97 NOTICE of filing exhibit A to defendants' response to plaintiffs' motion for stay pending appeal by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock (ch) [Entry date 12/13/00]

12/13/00 -- ENDORSED ORDER denying [95-1] motion to stay pending appeal (Signed by Judge James S. Moody Jr.) ctc (mrh) [Entry date 12/14/00]

12/14/00 -- TRANSMITTAL to USCA re: [92-1] appeal forwarding certified copy of order denying motion to stay pending appeal USCA # 00-15705-E (cdm)

12/15/00 -- ACKNOWLEDGMENT by USCA of receiving the original response to plaintiff's motion filed in District Court in error on re: [89-1] appeal USCA # 00-15705-E (dlg) [Entry date 12/18/00]

12/26/00 98 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L.

Creamer for reconsideration of [95-1] motion to stay pending appeal (ch) [Entry date 12/27/00]

12/27/00 -- TRANSMITTAL to USCA re: [92-1] appeal forwarding certified copy of motion to reconsider stay pending appeal USCA # 00-15705-E (cdm)

1/04/01 -- REQUEST by USCA to forward copies of documents #86, 87 and 93 re: [92-1] appeal, [89-1] appeal. USCA # 00-15705-EE (crs)

1/04/01 -- TRANSMITTAL to USCA re: [92-1] appeal, [89-1] appeal forwarding copies of documents #86, 87 and 93 per request. USCA # 00-15705-EE (crs)

1/04/01 99 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [98-1] motion for reconsideration of [95-1] motion to stay pending appeal (ch) [Entry date 01/05/01]

1/09/01 -- TRANSMITTAL to USCA re: [92-1] appeal, [89-1] appeal forwarding copy of defendant's response to plaintiff's motion to reconsider stay pending appeal. USCA # 00-15705-EE (crs)

1/16/01 -- ACKNOWLEDGMENT by USCA of receiving certified copies of motion to reconsider stay pending appeal under FRAP

Rule 8(a) and updated docket sheet on 1/2/01 re: [92-1] appeal USCA # 00-15705-E (dlg)

1/22/01 100 CERTIFICATE of readiness with certified copies of indexed district court docket sheet sent to USCA re: [92-1] appeal (ROA consists of: Volume pleadings: 2;) USCA# 00-15705-EE (crs)

1/22/01 -- ACKNOWLEDGMENT by USCA of receiving copies of documents #86, 87,and 93 as requested on 1/9/01 re: [92-1] appeal. USCA # 00-15705-EE (crs)

1/25/01 101 ORDER denying [86-1] motion for certification, denying [86-2] motion for entry of final judgment under Federal Rules Civil Procedure Rule 54(b) (Signed by Judge James S. Moody Jr.) ctc (ch) [Entry date 01/26/01]

1/26/01 102 ORDER denying [98-1] motion for reconsideration of [95-1] motion to stay pending appeal. Plaintiffs may file an amended complaint within 15 days from the date of this order. (Signed by Judge James S. Moody Jr.) ctc (ch) [Entry date 01/29/01]

1/29/01 -- ACKNOWLEDGMENT by USCA of receiving certificate of readiness on 1/25/01 re: [92-1] appeal. USCA # 00-15705-EE (crs)

1/31/01 -- TRANSMITTAL to USCA re: [92-1] appeal forwarding copy of order denying motion for reconsideration of motion to stay pending appeal. USCA # 00-15705-EE (crs)

2/02/01 -- ACKNOWLEDGMENT by USCA of receiving copy of defendant's response to plaintiff's motion to reconsider stay pending appeal on 1/12/01 re: [89-1] appeal USCA # 00-15705-EE (dlg)

2/08/01 -- ACKNOWLEDGMENT by USCA of receiving copy of order denying motion for reconsideration of motion to stay pending appeal on 2/2/01 re: [92-1] appeal. USCA # 00-15705-EE (crs) [Entry date 02/09/01]

2/09/01 103 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer to extend time to file an amended complaint (ch) [Entry date 02/12/01]

2/12/01 -- REQUEST by USCA to forward record on appeal re: [89-1] appeal, [92-1] appeal. USCA # 00-15705-EE (crs) [Entry date 02/13/01]

2/13/01 -- RECORD ON APPEAL sent to USCA re: [89-1] appeal, [92-1] appeal Transmittal includes: (ROA consists of: Volumes of pleadings: 2;) USCA# 00-15705-EE (crs)

2/20/01 104 ORDER granting in part, denying in part [103-1] motion to extend time to file an amended complaint, reset amended complaint deadline at 3/9/01 for William G. Krolman, for Kathy L. Creamer, for Ronald Clausnitzer, for Vincent J. Maccia, for Gerald D. Freeman (Signed by Judge James S. Moody Jr.) ctc (ch) [Entry date 02/21/01]

2/20/01 -- ACKNOWLEDGMENT by USCA of receiving record on appeal on 2/15/01 re: [89-1] appeal. USCA # 00-15705-EE (crs) [Entry date 02/22/01]

2/22/01 105 APPEARANCE of non-resident counsel and designation of local counsel as to Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman . Local counsel: Nevin A. Weiner. Non-resident counsel: David L. Rose. (ch) [Entry date 02/23/01]

2/22/01 106 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman for Linda Y. Sroufe to appear pro hac vice (ch) [Entry date 02/23/01]

2/22/01 107 MOTION by William G. Krolman to extend time to file an amended complaint (ch) [Entry date 02/23/01]

2/22/01 108 MOTION by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock with memorandum in support for reconsideration of [104-1] order (ch) [Entry date 02/23/01]

2/28/01 109 ORDER denying [106-1] motion for Linda Y. Sroufe to appear pro hac vice with leave to refile for failure to comply with Local Rule 2.02(a), which, among other things, requires the written consent of the designee prior to

appointment. (Signed by Judge James S. Moody Jr.) ctc (wlb) [Entry date 03/02/01]

3/06/01 110 RESPONSE by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock to [107-1] motion to extend time to file an amended complaint (cdm) [Entry date 03/07/01]

3/06/01 111 APPEARANCE of non-resident counsel and designation of local counsel as to Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman . Local counsel: Nevin Weiner Non-resident counsel: David L. Rose (cdm) [Entry date 03/07/01]

3/06/01 112 AMENDED COMPLAINT by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman amending [1-1] complaint (Answer due 3/20/01 for Federal Express Corp) adding Peter W. Crowe, Donna M. Lewis, Michael P. Culp, Kevin McQuillan, Charles Moncalieri, Kenneth Mutchler, Phyllis Nelson, Andy Kubicki, Ann Heffel, Melody Ludwig, Elizabeth Tucker, John Kuenning; jury demand (cdm) [Entry date 03/07/01]

3/14/01 -- ENDORSED ORDER granting [111-1] counsel designation (Signed by Judge James S. Moody Jr.) ctc (rjc)

3/16/01 113 MEMORANDUM by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman, Peter W. Crowe, Donna M. Lewis, Michael P. Culp, Kevin McQuillan, Charles Moncalieri, Kenneth Mutchler, Phyllis Nelson, Andy Kubicki, Ann Heffel, Melody Ludwig, Elizabeth Tucker, John Kuenning in opposition to [108-1] motion for reconsideration of [104-1] order (ch) [Entry date 03/19/01]

3/20/01 114 NOTICE to clerk to delete Ann Heffel from list of plaintiffs in amended complaint (ch) [Entry date 03/21/01]

3/22/01 115 MOTION by Federal Express Corp. with memorandum in support for stay pending appeal (mrh) [Entry date 03/23/01]

3/23/01 -- TRANSMITTAL to USCA re: [92-1] appeal forwarding copy of motion by Federal Express for stay pending appeal. USCA # 00-15705-EE (crs)

3/30/01 -- ACKNOWLEDGMENT by USCA of receiving copy of motion by Federal Express to stay pending appeal on 3/27/01 re: [92-1] appeal. USCA # 00-15705-EE (crs) [Entry date 04/02/01]

4/02/01 116 MEMORANDUM by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman, Peter W. Crowe, Donna M. Lewis, Michael P. Culp, Kevin McQuillan, Charles Moncalieri,

Kenneth Mutchler, Phyllis Nelson, Andy Kubicki, Ann Heffel, Melody Ludwig, Elizabeth Tucker, John Kuenning in opposition to [115-1] motion for stay pending appeal (ch) [Entry date 04/03/01]

6/08/01 117 ORDER granting [115-1] motion for stay pending appeal, denying without prejudice [108-1] motion for reconsideration of [104-1] order, denying without prejudice [107-1] motion to extend time to file an amended complaint (Signed by Judge James S. Moody Jr.) ctc (ch)

6/11/01 -- TRANSMITTAL to USCA re: [92-1] appeal forwarding copy of order staying case pending appeal. USCA # 00-15705-E (crs) [Entry date 06/11/01]

6/18/01 -- ACKNOWLEDGMENT by USCA of receiving copy of order staying case pending appeal on 6/13/01 re: [92-1] appeal. USCA # 00-15705-E (crs) [Entry date 06/19/01]

2/14/02 118 USCA DECISION (certified copy) [89-1] appeal, [92-1] appeal affirming judgment/order Mandate date: 2/12/02 USCA EOD: 1/14/02 (Opinion attached) USCA # 00-15705-EE (crs)

2/14/02 119 BILL OF COSTS taxed in the amount of $107.00 against appellant, Gerald D. Freeman, et al and payable to appellee, Federal Express Corporation, et al. USCA # 00-15705-EE (crs) [Edit date 02/21/02]

2/14/02 -- RECORD on appeal returned from USCA re: (ROA consists of: Volume pleadings: 2;) USCA# 00-15705-EE (crs)

2/26/02 120 ORDER removing case stay and scheduling status conference set status conference for 1:30 3/25/02 scheduled for Judge James S. Moody Jr. (Signed by Judge James S. Moody Jr.) ctc (jlg)

2/26/02 121 MOTION by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman, Federal Express Corp, Peter W. Crowe, Donna M. Lewis, Michael P. Culp, Kevin McQuillan, Charles Moncalieri, Kenneth Mutchler, Phyllis Nelson, Andy Kubicki, Ann Heffel, Melody Ludwig, Elizabeth Tucker, John Kuenning for leave to amend [112-1] amended complaint (Second Amended Complaint attached) (sld) [Entry date 02/27/02]

2/26/02 122 MEMORANDUM OF POINTS AND AUTHORITIES by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman, Federal Express Corp, Peter W. Crowe, Donna M. Lewis, Michael P. Culp, Kevin McQuillan, Charles Moncalieri, Kenneth Phyllis Nelson, Andy Kubicki, Ann Heffel, Melody Ludwig, Elizabeth Tucker, John Kuenning in support of [121-1] motion for leave to amend [112-1] amended complaint (Second Amended Complaint attached) (sld) [Entry date 02/27/02]

2/26/02 123 CERTIFICATE OF COMPLIANCE with Local Rule 3.01(g) by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman, Federal Express Corp, Peter W. Crowe, Donna M. Lewis, Michael P. Culp, Kevin McQuillan, Charles Moncalieri, Kenneth Mutchler, Phyllis Nelson, Andy Kubicki, Ann Heffel, Melody Ludwig, Elizabeth Tucker, John Kuenning Re: order (sld) [Entry date 02/27/02]

2/26/02 124 CERTIFICATE OF SERVICE of [123-1] compliance certificate, [122-1] support memorandum, [121-1] motion for leave to amend [112-1] amended complaint, Second Amended Complaint and proposed order by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman, Federal Express Corp, Peter W. Crowe, Donna M. Lewis, Michael P. Culp, Kevin McQuillan, Charles Moncalieri, Kenneth Phyllis Nelson, Andy Kubicki, Ann Heffel, Melody Ludwig, Elizabeth Tucker, John Kuenning (sld) [Entry date 02/27/02]

3/04/02 125 MOTION by Federal Express Corp, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, Susan Matlock with memorandum in support to administratively close and stay all proceedings until closure (ch) [Entry date 03/05/02]

3/13/02 126	NOTICE to Court regarding plaintiffs' motion for leave to amend by Federal Express Corp, et al. (ch) [Entry date 03/14/02]
3/18/02 127	RESPONSE by Gerald D. Freeman, Vincent J. Maccia, Ronald Clausnitzer, Kathy L. Creamer, William G. Krolman, Peter W. Crowe, Donna M. Lewis, Michael P. Culp, Kevin McQuillan, Charles Moncalieri, Kenneth Mutchler, Phyllis Nelson, Andy Kubicki, Ann Heffel, Melody Ludwig, Elizabeth Tucker, John Kuenning in opposition to [125-1] motion to administratively close and stay all proceedings until closure (ch) [Entry date 03/19/02]
3/25/02 128	STATUS CONFERENCE held on 3/25/02 on pending motions before Judge James S. Moody Jr. Court Reporter: Debbie Flatow Order to follow. (ch)
3/28/02 129	ORDER directing administrative closure. Order [82-1] of 9/25/00 of this Court became final on 10/23/00. (Signed by Judge James S. Moody Jr.) ctc (ch)
6/07/02 130	TRANSCRIPT of oral argument hering held on 3/25/02 before Judge James S. Moody, Jr.. Transcript filed separately. (ch)

Case Flags:

ADMCLO

JA 148

TGW

END OF DOCKET: 8:99cv2466

(The decision of the Court is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. The Eleventh Circuit provides by rule that unpublished opinions are not considered binding precedent. They may be cited as persuasive authority, provided that a copy of the unpublished opinion is attached to or incorporated within the brief, petition or motion. Eleventh Circuit Rules, Rule 36-2, 28 U.S.C.A.)

UNITED STATES COURT OF APPEALS,
ELEVENTH CIRCUIT

Gerald D. Freeman
v.
Federal Express Corp. [FN*]

NO. 00-15705

January 14, 2002

Appeal from: M.D.Fla., No. 9902466CIVT30B

Affirmed

FN* Fed.R.App.P. 34(a); 11th Cir.R. 34-3

31 Fed.Appx. 929 (Table), 2002 WL 187185 (11th Cir.(Fla.))

END OF DOCUMENT

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

ENTER CHARGE NUMBER

☒FEPA PCO#9607-02545
☒EEOC 15B960120(C)

Clearwater Human Relations Department and EEOC
(*State or local Agency, if any*)

NAME (Indictate Mr., Ms., or Mrs.)
Mr. Gerald D. Freeman

HOME TELEPHONE NO. (Include Area Code)
(813) 733-2053

STREET ADDRESS CITY, STATE AND ZIP CODE
2700 Bayshore Blvd. #5105 Dunedin, FL 34698

COUNTY
Pinellas

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (*If more than one list below.)*

NAME NO. OF EMPLOYEES/MEMBERS
Federal Express Corporation 20+

TELEPHONE NUMBER (Include Area Code)
(813) 736-6727

STREET ADDRESS
1881 Main Street

CITY, STATE AND ZIP CODE
Dunedin, FL 34698

CAUSE OF DISCRIMINATION BASED ON
(Check appropriate box(es))
☒ AGE

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE
(Month, day, year)
April 22, 1996 & continuing

THE PARTICULARS ARE (*If additional space is needed, attached extra sheet(s)):*

I. STATEMENT OF HARM:
I am being subjected to disparate treatment and harassed into voluntary retirement. I have been employed by Federal Express Corporation since September 27, 1982. My current position is Courier.

II. RESPONDENT'S REASON FOR ADVERSE ACTION:
No reasons have been given.

III. STATEMENT OF DISCRIMINATION:
I believe that I have been subjected to unlawful discrimination on the basis of my age (45) in violation of the Age Discrimination in Employment Act.

☒ I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and

I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

Date: July 8, 1996 /s/Gerald S. Freeman
Charging Party (Signature)

NOTARY - When necessary to meet State and Local Requirements)
/s/

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT
/s/Gerald S. Freeman

SUBSCRIBED AND SWORN BEFORE ME THIS DATE
(Day, month, and year)
08 JUL '96 [NOTARY STAMP]

EEOC FORM 161 (10/96)

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To:

Gerald D. Freeman
2700 Bayshore Blvd #5106
Dunedin, Florida 34698-1659

From:

U.S. Equal Employment Opportunity Commission
Tampa Area Office
501 E. Polk Street, Room 1020
Tampa, Florida 33602

* * *

Charge No.	EECO Representative	Telephone No.
15B960120	Sylvia Pouncy	(813) 228-2310

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

* * *

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

* * *

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may pursue this matter further by bringing suit in federal or state court against the respondent(s) named in the charge. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice. Otherwise your right to sue based on the above-numbered charge will be lost.

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible. (If you file suit, please send a copy of your court complaint to this office.)

On behalf of the Commission

/s/
Manuel Zurita, Area Director

9-15-99
(Date Mailed)

Enclosure
Copy of Charge

cc: CoAnn Sims Ressler
Sr EEO Specialist
FedEx
2600 Nonconnah Suite 100
Memphis, TN 38132

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY	CHARGE NUMBER
⊠EEOC	151980767

* * *

NAME (Indictate Mr., Ms., or Mrs.)
Mr. Vincent J. Maccia

HOME TELEPHONE NO. (Include Area Code)
(813) 934-2914

STREET ADDRESS	CITY, STATE AND ZIP CODE
216 Earl Street	Tarpon Springs, FL 34689

DATE OF BIRTH
[REDACTED]/45

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (*If more than one list below.)*

NAME	TELEPHONE NUMBER
Federal Express Corporation	(813) 736-6727

STREET ADDRESS	CITY, STATE AND ZIP CODE
1881 Main Street	Dunedin, FL 34698

COUNTY
103

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*

☒ RETALIATION

DATE DISCRIMINATION TOOK PLACE

EARLIEST	*LATEST*
02/04/98	02/05/98

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s))*:

I. PERSONAL HARM:
On February 4, 1998, I was called on the "Dads" unit, and told I had a meeting with Mike Goodling at 1600 hrs", per my supervisor. I was not given any relief to assist with my deliveries. I was told I could not meet later, and I could not have any late deliveries. While in the meeting with Mike Goodling, I was questioned about my reasons for filing an "external EEO complaint". I did not answer any questions on the advise of my attorney.

II. RESPONDENT'S REASON(S) FOR ADVERSE ACTION(S):
I was not given any reason for the meeting with Mike Goodling. I was not given any reason for not being given a relief to assist with my deliveries. I was not given any reason for the harassment.

III. DISCRIMINATION STATEMENT:
I believe I have been retaliated against for filing a previous age discrimination charge (EEOC #15B970133), in violation of the Age Discrimination in Employment Act of 1967.

NOTARY - When necessary to meet State and Local Requirements)
/s/_____

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT
/s/Vincent J. Maccia

SUBSCRIBED AND SWORN BEFORE ME THIS DATE
(Day, month, and year)
3rd April 98 [NOTARY STAMP]

EEOC FORM 161 (10/96)

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To:

Mr. Vincent J. Maccia
216 Earl Street
Tarpon Springs, Florida 34689

From:

U.S. Equal Employment Opportunity Commission
Tampa Area Office
501 E. Polk Street, Room 1020
Tampa, Florida 33602

* * *

Charge No.	EECO Representative	Telephone No.
151980767	Sylvia Pouncy, Supervisor	(813) 228-2310

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

* * *

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

* * *

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may pursue this matter further by bringing suit in federal or state court against the respondent(s) named in the charge. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice. Otherwise your right to sue based on the above-numbered charge will be lost.

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible. (If you file suit, please send a copy of your court complaint to this office.)

On behalf of the Commission

/s/
Manuel Zurita, Area Director

8-2-99
(*Date Mailed*)

Enclosure
Copy of Charge

cc: Ms. CoAnn Sims Ressler
Sr. EEO Specialist
Federal Express
Post Office Box 727
Memphis, Tennessee 38194-2440

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY	CHARGE NUMBER
⊠EEOC	151970705

* * *

NAME (Indictate Mr., Ms., or Mrs.)
Mr. Ronald Clausnitzer

HOME TELEPHONE NO. (Include Area Code)
(813) 786-6357

STREET ADDRESS	CITY, STATE AND ZIP CODE
533 E. Curlew Road	Tarpon Springs, FL 34689

DATE OF BIRTH
[REDACTED]/55

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (*If more than one list below.)*

NAME	NUMBER OF EMPLOYEES, MEMBERS
Federal Express Corporation	CAT B (101-200)

TELEPHONE NUMBER
(813) 736-6727

STREET ADDRESS	CITY, STATE AND ZIP CODE
1881 Main Street	Dunedin, FL 34698

COUNTY
103

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*

☒ RETALIATION

DATE DISCRIMINATION TOOK PLACE

EARLIEST	*LATEST*
02/04/98	09/09/97

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s))*:

I. PERSONAL HARM:
On February 4, 1998, I was called twice on my radio and told to re to the station, but given no reason. The third time I was called, I was told I had to meet with Mike Goodling, again given no reason. At the meeting, Mr. Goodling began to ask questions about my filing "an external EEO complaint." I did not answer any questions, on the advise of my attorney.

II. RESPONDENT'S REASON(S) FOR ADVERSE ACTION(S):
I was not given any reason for the "secrecy" as to me returning to the station. I was told by Mike Goodling that he needed to question me to "find out why I filed outside the agency and how we can resolve the matter." I was told by Mike Goodling that I was refusing to cooperate, when I told him I would not answer any questions. I have been given no other reason for this harassment.

III. DISCRIMINATION STATEMENT:
I believe I have been retaliated against for filing a previous age discrimination charge (EEOC #15B970137), in violation of the Age Discrimination in Employment Act of 1967.

NOTARY - When necessary to meet State and Local Requirements)
/s/_____

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT
/s/Ronald Clausnitzer

SUBSCRIBED AND SWORN BEFORE ME THIS DATE
(Day, month, and year)
8/23/98 [NOTARY STAMP]

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

ENTER CHARGE NUMBER
☒FEPA PCO#9709-02750
☒EEOC 15B970137(C)

Clearwater Human Relations Department and EEOC
(*State or local Agency, if any*)

NAME (Indictate Mr., Ms., or Mrs.)
Ronald Clausnitzer (Mr.)

HOME TELEPHONE NO. (Include Area Code)
(813) 786-6357

STREET ADDRESS CITY, STATE AND ZIP CODE
175 Kristen Ct., #418 Palm Harbor, FL 34684

COUNTY
Pinellas

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (*If more than one list below.)*

NAME NO. OF EMPLOYEES/MEMBERS
Federal Express Corporation 15+

TELEPHONE NUMBER
(813) 736-6727

STREET ADDRESS: 1881 Main Street
CITY, STATE AND ZIP CODE: Dunedin, FL 34698

CAUSE OF DISCRIMINATION BASED ON
(Check appropriate box(es))
☒ AGE

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE
(Month, day, year)
September 9, 1997

THE PARTICULARS ARE (*If additional space is needed, attached extra sheet(s)):*

I. STATEMENT OF HARM:

I am being subjected to disparate treatment and harassment by the Respondent. I have been employed by the Respondent since December 3, 1983. My current position is that of Courier.

II. RESPONDENT'S REASON FOR ADVERSE ACTION:

No reasons have been given.

III. STATEMENT OF DISCRIMINATION:

I believe that I have been subjected to unlawful discrimination on the basis of my age (42) in violation of the Age Discrimination in Employment Act.

☑I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 9-22-97 /s/Ronald Clausnitzer
Charging Party (Signature)

NOTARY - When necessary to meet State and Local Requirements)
/s/Demetria I. Pardales

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT
/s/Ronald Clausnitzer

SUBSCRIBED AND SWORN BEFORE ME THIS DATE
(Day, month, and year)
9/22/97 [NOTARY STAMP]

EEOC FORM 161 (10/96)

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To:

Mr. Ronal Clausnitzer
275 Kristen Court #418
Palm Harbor, Florida 34684

From:

U.S. Equal Employment Opportunity Commission
Tampa Area Office
501 E. Polk Street, Room 1020
Tampa, Florida 33602

* * *

Charge No.	EECO Representative	Telephone No.
151980705	Sylvia Pouncy, Supervisor	(813) 228-2310

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

* * *

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

* * *

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form)

Title VII, the American with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may pursue this matter further by bringing suit in federal or state court against the respondent(s) named in the charge. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice. Otherwise your right to sue based on the above-numbered charge will be lost.

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible. (If you file suit, please send a copy of your court complaint to this office.)

On behalf of the Commission

/s/
Manuel Zurita, Area Director

8-2-99
(Date Mailed)

Enclosure
Copy of Charge

cc: Ms. CoAnn Sims Ressler
Sr. EEO Specialist
Federal Express

EEOC FORM 161 (10/96)

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To:

Mr. Ronald Clausnitzer
275 Kristen Court #418
Palm Harbor, Florida 34684

From:

U.S. Equal Employment Opportunity Commission
Tampa Area Office
501 E. Polk Street, Room 1020
Tampa, Florida 33602

* * *

Charge No.	EECO Representative	Telephone No.
15B970137	Sylvia Pouncy, Supervisor	(813) 228-2310

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

* * *

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

* * *

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may pursue this matter further by bringing suit in federal or state court against the respondent(s) named in the charge. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice. Otherwise your right to sue based on the above-numbered charge will be lost.

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible. (If you file suit, please send a copy of your court complaint to this office.)

On behalf of the Commission

/s/
Manuel Zurita, Area Director

8-2-99
(*Date Mailed*)

Enclosure
Copy of Charge

cc: Ms. CoAnn Sims Ressler
Sr. EEO Specialist
Federal Express
Post Office Box 727
Memphis, Tennessee 38194-2440

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

ENTER CHARGE NUMBER
☒FEPA PCO#9710-02758
☒EEOC 15B980004(C)

Clearwater Human Relations Department and EEOC
(*State or local Agency, if any*)

NAME (Indictate Mr., Ms., or Mrs.)
Kathy Creamer (Ms.)

HOME TELEPHONE NO. (Include Area Code)
(813) 791-3693

STREET ADDRESS CITY, STATE AND ZIP CODE
603 ~~613~~ Hammock Pine Bl Clearwater, FL 33761

COUNTY
Pinellas

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (*If more than one list below.)*

NAME NO. OF EMPLOYEES/MEMBERS
Federal Express Corporation 15+

TELEPHONE NUMBER
(813) 736-6727

STREET ADDRESS
1881 Main Street

CITY, STATE AND ZIP CODE
Dunedin, FL 34698

CAUSE OF DISCRIMINATION BASED ON
(Check appropriate box(es))
☒ AGE

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE
(Month, day, year)
July 10, 1997

THE PARTICULARS ARE (*If additional space is needed, attached extra sheet(s)):*

I. STATEMENT OF HARM:

I was subjected to disparate treatment, disciplinary actions, and was fired from my position as Courier by the Respondent. I had been employed by the Respondent for sixteen (16) years.

II. RESPONDENT'S REASON FOR ADVERSE ACTION:

I did not meet the Best Practice Pays Program standards of performance.

III. STATEMENT OF DISCRIMINATION:

I believe that I have been subjected to unlawful discrimination on the basis of my age (41) in violation of the Age Discrimination in Employment Act.

☒I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 10-06-97 /s/Kathy Creamer
Charging Party (Signature)

NOTARY - When necessary to meet State and Local Requirements)
/s/Lori L. Reaves

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT
/s/Kathy Creamer

SUBSCRIBED AND SWORN BEFORE ME THIS DATE
(Day, month, and year)
10-6-97 [NOTARY STAMP]

EEOC FORM 161 (10/96)

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To:

Ms. Kathy Creamer
603 Hammock Pine Blvd.
Clearwater, Florida 33761

From:

U.S. Equal Employment Opportunity Commission
Tampa Area Office
501 E. Polk Street, Room 1020
Tampa, Florida 33602

* * *

Charge No.	EECO Representative	Telephone No.
15B980004	Sylvia Pouncy, Supervisor	(813) 228-2310

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

* * *

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

* * *

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form)

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On behalf of the Commission

/s/
Manuel Zurita, Area Director

8-2-99
(Date Mailed)

Enclosure
Copy of Charge

cc: Ms. CoAnn Sims Ressler
Sr. EEO Specialist
Federal Express
Post Office Box 727
Memphis, Tennessee 38194-2440

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse side before completing this form.

ENTER CHARGE NUMBER
☒FEPA PCO#9712-02812
☒EEOC 15B980052(C)

Clearwater Human Relations Department and EEOC
(*State or local Agency, if any*)

NAME (Indictate Mr., Ms., or Mrs.)
Mr. William G. Krolman

HOME TELEPHONE NO. (Include Area Code)
(417) 624-6786

STREET ADDRESS
3028 Pearl Avenue

CITY, STATE AND ZIP CODE
Joplin, Missouri 64804

COUNTY
Jasper

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (*If more than one list below.)*

NAME
Federal Express Corporation

NO. OF EMPLOYEES/MEMBERS
20+

TELEPHONE NUMBER
(813) 736-6727

STREET ADDRESS	CITY, STATE AND ZIP CODE
1881 Main Street	Dunedin, Pinellas County FL 34698

CAUSE OF DISCRIMINATION BASED ON
(Check appropriate box(es))
☒ AGE
☒ OTHER (*Specify*) Disability

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE
(Month, day, year)
July 3, 1997

THE PARTICULARS ARE (*If additional space is needed, attached extra sheet(s)):*

I. STATEMENT OF HARM:
I was subjected to disparate treatment, not accommodated regarding my disability and terminated from my position as Courier on July 3, 1997.

II. RESPONDENT'S REASON FOR ADVERSE ACTION:
I was told I was terminated due to excessive absenteeism in the previous year.

III. STATEMENT OF DISCRIMINATION:
I believe that I have been discriminated against in violation of Title I of the Americans with Disability Act of 1990; the Age Discrimination in Employment Act; the Florida Civil Rights Act of 1992; and Chapter 70 of the Pinellas County Code on the basis of my Disability and Age (42).

☒ I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 12/29/97 /s/William G. Krolman
Charging Party (Signature)

NOTARY - When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT
/s/William G. Krolman

SUBSCRIBED AND SWORN BEFORE ME THIS DATE
(Day, month, and year)
12/29/97 [NOTARY STAMP]

EEOC FORM 161 (10/96)

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

ENTER CHARGE NUMBER
☒FEPA PCO#9712-02812
☒EEOC 15B980052(C)

To:

Mr. William G. Krolman
3028 Pearl Avenue
Joplin, Missouri 64804

From:

U.S. Equal Employment Opportunity Commission
Tampa Area Office
501 E. Polk Street, Room 1020
Tampa, Florida 33602

* * *

Charge No.	EECO Representative	Telephone No.
15B980052	Robert Curry, Supervisor	(813) 228-2310

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

* * *

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any

other issues that might be construed as having been raised by this charge.

* * *

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may pursue this matter further by bringing suit in federal or state court against the respondent(s) named in the charge. If you decide to sue, you must sue WITHIN 90 DAYS from your receipt of this Notice. Otherwise your right to sue based on the above-numbered charge will be lost.

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible. (If you file suit, please send a copy of your court complaint to this office.)

On behalf of the Commission

/s/
Manuel Zurita, Area Director

6/22/99
(*Date Mailed*)

Enclosure
Copy of Charge

cc: Federal Express Corporation

UNITED STATES DISTRICT COURT
Southern District of New York

02-CV-3355 (LMM)

[Filed August 6, 2002]

Paul Holowecki, Patricia Kennedy,	)
Donna M. Lewis, Charles Moncalieri,	)
Phyllis Nelson, Andy Kubicki,	)
Elizabeth Tucker, Steven Almendarez,	)
Frank J. Martinez, Kelly L. Martinez,	)
Kevin McQuillan, Kenneth G. Mutchler,	)
George Robertson, and Nancy Trompics,	)
individually and on behalf of all others	)
similarly situated,	)
	)
Plaintiffs,	)
	)
v.	)
	)
Federal Express Corporation,	)
	)
Defendant.	)
	)

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO THE DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Defendant, Federal Express Corporation ("FedEx"), has moved to dismiss the age discrimination claims of the Plaintiffs, 14 current and former FedEx couriers, on the grounds that the Plaintiffs did not comply with the administrative procedures pursuant to which a state or federal

government agency notify an employers of a charge of discrimination and try to conciliate the charges. FedEx has been on continuous notice of charges of systemic discrimination against older couriers since 1995 and has never conciliated any such charge. The filing of these charges, and a subsequent putative class action, *Freeman et al. v. Federal Express Corporation,* No. 99-2466-Civ-T-30B (M.D. Fla.) provided notice to FedEx and tolled the running of the limitations period. The motion to dismiss should be denied.

STATEMENT OF THE CASE

The following facts alleged in the complaint are to be taken as true for purposes of this motion. Additional facts are supported by Plaintiffs' exhibits, submitted herewith.

1. In late 1994 or early 1995, FedEx adopted a compensation system called "Best Practices Pays" and "Minimum Acceptable Performance Standards." From the time those programs began, FedEx has systematically discriminated to terminate or drive out older couriers, and particularly older couriers who had been injured, while favoring younger couriers. Complaint ¶¶ 13-22. The Complaint in this case describes ten ways in which FedEx implemented and executed a practice of discriminating against older couriers and in favor of younger couriers. Complaint, ¶ 23, a) through j). These practices are carried out throughout the United States and FedEx has continued to follow those practices. Complaint ¶¶ 24-26 and 30. Under Count I, Plaintiffs seek relief under the Age Discrimination in Employment Act, 29 U.S.C. 621, et seq. ("ADEA"). Complaint ¶¶ 1-31. Under Count II, plaintiffs seek relief under the laws of New York, California, Michigan and New Jersey, and seek class action certification under the State laws prohibiting age discrimination. Complaint ¶¶ 33-39.

2. Gerald Freeman has worked for FedEx as a courier in Florida since 1982. On June 6, 1996, he filled out an Intake Questionaire and a four page Affidavit for the EEOC and the Clearwater Human Relations Department, showing that he was born on July 11, 1950, and that for the past sixteen months, that is since February, 1995, FedEx management had attempted to terminate and harass him and "others so situated," that is older couriers and customer service agents, into "voluntary" retirement or termination. Plaintiffs' Exhibit 1 (attached). In that affidavit, he asked "Are all of the things just described being applied evenly to younger employees ? Absolutely not !" *Id.*, p. 3. Based upon that information, he filed a formal charge with the Clearwater Human Relations Department and EEOC on July 6, 1996. Def. Motion to Dismiss, Morrison Dec., Ex. 8.

4. Vincent Maccia, another FedEx courier, filed a similar affidavit in September, 1997, stating that in the last three years there was a "radical change in ethical standards...orchestrated by FedEx Corporate Headquarters in Memphis, Tennessee, to target their older workforce nationwide !" Plaintiffs' Exhibit 2, p. 2. "No matter where my travels, in speaking with other FedEx employees, in states such as California, Georgia, Louisiana, Washington, Washington, D.C., New York, New Jersey, Tennessee, Texas, Nevada, Illinois, and within the state of Florida, they ALL displayed the same frustrations with the harassment tactics of management toward them and other senior employees." *Id.* He also filed a charge dated Sept. 1, 1997, EEOC # 15B97-133. Def. Motion to Dismiss, Morrison Dec., Ex. 8.

5. EEOC issued right to sue letters to Maccia and three others (Creamer, Clausnitzer and Krollman) on Aug. 2, 1999, and to Freeman on Sept. 15, 1999. *Id.* On October 26, 1999,

these five individuals and a sixth courier, Wayne Tate, all *pro se*, filed suit on their own behalf and "other similarly situated couriers", *Freeman et al. v. FedEx Corporation,* M.D. Fla., No. 99-CV-2466. Plaintiffs' Exhibit 3. Count XIII of the Complaint alleged a class action under 29 U.S.C. Section 216(b). Complaint pp. 57-59. The case was filed within 90 days of the receipt of notices of right to sue. Defendant's Motion to Dismiss, Morrison Declaration, Exs. 6, 8. The *Freeman* plaintiffs alleged that FedEx had engaged age discrimination against plaintiffs and other similarly situated older couriers at least since the adoption of the Best Practices Pays program, in violation of the ADEA and the Florida Civil Rights Act. Plaintiffs' Exhibit 3. FedEx moved to dismiss or strike the complaint on grounds that it was so verbose as to be difficult to respond to. Plaintiffs' Exhibit 4. FedEx noted that the complaint alleged a class action. Id

6. On January 27, 2000, the *Freeman* plaintiffs filed their motion to certify a nation-wide class action. Defendant's Motion, Morrison Dec., Exhibit 7, R. 18.[1] Defendants responded on February 14, 2000. *Id.*, R.31.

7. The *Freeman* suit was dismissed *without prejudice* and with leave to amend on Sept. 25, 2000, on the grounds that the Complaint was excessively verbose. At the same time, the motion for class certification was denied as moot. *Id.*, R.82. Plaintiffs Freeman, Maccia, Clausnitzer and Creamer appealed *pro se*. *Id.*

8. While the appeal was pending in the Eleventh Circuit, the district court extended plaintiffs' time to amend their

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[1] Defendant submitted the docket entries in the *Freeman* case as an attachment to the Morrison declaration and they are cited herein as R.___.

complaint, first to mid-February 2001, and thereafter to March 9, 2001. *Id,* R. 102 and 103. Plaintiffs, represented by the undersigned counsel, filed an amended complaint on March 6, 2001, with allegations of a nation wide pattern or practice of age discriminatory practices by FedEx Corporation. *Id.* R. 112. Twelve new potential plaintiffs were included in the amended complaint, including seven of the plaintiffs in this case, namely Donna Lewis, Kevin McQuillan, Charles Moncalieri, Andy Kubicki, Kenneth Mutchler, Phyllis Nelson and Elizabeth Tucker. *Id.*, R. 112. Plaintiffs also sought to dismiss their appeal voluntarily. On January 14, 2002, the Eleventh Circuit issued two orders in the *Freeman* appeal. The first order denied Plaintiffs-Appellants' motion to withdraw the appeal voluntarily. The second order affirmed the District Court's Order of September 25, 2000 dismissing the case. The Eleventh Circuit, following *Schuurman v. Motor Vessel "Betty K V"*, 798 F.2d 442, 445 (11th Cir.1986)(per curiam), held that by filing a notice of appeal, the *Freeman* plaintiffs had rendered the dismissal *without* prejudice final and appealable. A status conference was held in the District Court on March 25,2002, and on the motion of FedEx, the *Freeman* case was closed administratively on March 28, 2002. *Id.*, R. 129.

9. Plaintiff George Robertson worked for Federal Express Corporation until he was terminated on September 8, 2000. He filed a charge of age and disability discrimination against Federal Express Corporation on December 1, 2000. Apparently, EEOC issued a notice of right-to-sue letter to Robertson on April 25, 2001, which he did not receive until the next year, shortly after February 7, 2002. Plaintiffs' Exhibit 5, Robertson Declaration.

10. Plaintiff Patricia Kennedy has worked for FedEx as a courier in Florida since 1987. On December 3, 2001, she

contacted the EEOC in Tampa, answered the questions on a two page "Intake Questionaire," which she signed, and submitted a notarized five page affidavit. Plaintiffs' Exhibit 6. The questionnaire does not state that the form is not a charge, or that any additional steps are necessary to file a charge. *Id.* The form of the Affidavit states that the "Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open..." In the affidavit, Ms. Kennedy stated that during her first eight years at FedEx, she received favorable performance reviews and repeated bonus pay-outs, confirming her dedication to her customers and to her employer. Since the adoption of the Best Practices Pays Program, and the Minimum Acceptable Performance Standards in 1995, FedEx has "systematically targeted" her and others, "because of age", and that the practices were "continuing." Plaintiffs' Exhibit 6, Affidavit, p. 1. She submitted four additional pages of detailed allegations of systematic age discrimination against older couriers. *Id.* Affidavit, pp. 2-5. Ms. Kennedy concluded that "I know that I am not alone and many older couriers share my doubts and fears regarding being terminated or forced to retire...FedEx does not want us pre-1988 employees to continue to our employment lest they will have to pay for our retirement health benefits if we can complete 10 continuous years of service between 45 and 55." P. Ex. 1, Affidavit, p. 5. She asked EEOC to "force FedEx to end their age discrimination, so we can finish out our careers." *Id.* Her allegations were summarized in Charge No. 151A2011381, signed on May 30, 2002. Plaintiffs' Exhibit 7.

11. The Court received the complaint in this case on Monday, April 29, 2002 and it was signed for by D. Holmes. Plaintiffs' Exhibit 8.. The Complaint was marked "Filed" and entered on the Docket on April 30, 2002. *Id.*

ARGUMENT

Defendant has moved to dismiss the complaint as to twelve of the plaintiffs on the grounds that they failed to exhaust administrative remedies because they did not file charges with EEOC.[2] Defendant has also moved to dismiss the claims of the other two plaintiffs on the grounds that they filed suit more than 90 days after the EEOC issued notices of right to sue.[3]

A complaint states a claim upon which relief can be granted if it provides the defendant with "fair notice" of what plaintiff's claims are and the grounds on which they rest. *Conley v. Gibson,* 355 U.S. 41, 47 (1957); *Swierkiewicz v. Surena, N.A.,* ___ U.S.___, 122 S.Ct. 992, 998 (2002).

The charge-filing requirement in the ADEA, like the requirement in Title VII, is not jurisdictional. *Zipes v. Trans World Airlines,* 455 U.S. 385, 395 n.11 (1982). It is subject to equitable doctrines such as waiver, tolling and estoppel. *Morgan v. National Passenger Rail Road Corp.,* ___ U.S.___, 122 S.Ct. 2061, 2073, n.9 (2002) *citing Zipes,* 455 U.S. at 393. Furthermore, unlike Title VII, the ADEA does not require that a plaintiff obtain a right-to-sue letter before beginning litigation. 29 U.S.C. § 626(d). The ADEA only

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[2] These plaintiffs are Mr. Holowecki, Ms. Kennedy, Ms. Lewis, Mr. Moncalieri, Ms. Nelson, Mr. Kubicki, Ms. Tucker, Mr. Almendarez, Mr. Martinez, Ms. Martinez, Mr. Mutchler, and Ms. Nancy Trompics. Ms. Trompics, whose name was mis-spelled "Thompics"in the original complaint, was a courier for FedEx in Michigan until October 2001. Defendant is mistaken as to Ms. Kennedy, who has filed a charge. *See, supra, ¶ 10.*

[3] These two plaintiffs are McQuillen and Robertson.

requires that a charge be filed sixty (60) days before a suit is filed. The ADEA requires that upon receiving a charge, EEOC must promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion. *Id.* Accordingly, the purpose of the charge-filing requirements is to prevent surprise of defendants and allow EEOC an opportunity to conciliate claims. *Winbush v.State of Iowa,* 66 F.3d 1471, 1478 (8th Cir. 1995).

The ADEA authorizes employees to bring age discrimination actions "for and in behalf of... themselves and other employees similarly situated." 29 U.S.C. § 626(b); 29 U.S.C. § 216(b). In those provisions, "Congress has stated its policy that ADEA plaintiffs should have the opportunity to proceed collectively." *Hoffman-La Roche, Inc. v. Sperling,* 493 U.S. 165, 170 (1989)

The 11 plaintiffs in this case who did not file charges can maintain this action. In collective actions under the ADEA, groups of plaintiffs have satisfied the statutory exhaustion of administrative remedies requirement based on a single valid charge filed by a similarly situated individual. *Tolliver v. Xerox Corp.*, 918 F.2d 1052 (2d Cir. 1990), *cert. denied* 499 U.S. 983 (1991). The single-filing rule is also followed in Title VII cases. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 414 n. 8 (1975). The rationale behind this single-filing rule, also known as piggy-backing, is that a single charge puts an employer on notice of potential litigation and it is futile to file multiple charges against an employer that is not willing to conciliate a single charge. *Anderson v. Montgomery Ward & Co.*, 852 F.2d 1008, (7th Cir. 1988). FedEx has submitted no evidence that it has participated in conciliation efforts for any

of the age discrimination charges filed against it by older couriers.

Once the EEOC closed its investigations of the charges of the *Freeman* plaintiffs, the Complaint and Motion for Class Certification filed in the Middle District of Florida kept FedEx on notice of a potential class action. FedEx received and responded to the motion for class certification. Defendant's Motion to Dismiss, Morrison Dec, Ex. 7, R. 46. FedEx argues that everything filed in the *Freeman* case after September 25, 2000 is void because the case had been dismissed. However, both the parties and the District Court judge were mistaken about the status of the case until the Eleventh Circuit ruled that the September 25, 2002 dismissal had become final and appealable. In the interim, among other actions the District Court Judge had extended the time for filing an amended complaint. Regardless of the effect of the first and second amended complaints upon the *Freeman* litigation, for purposes of the present case they served as notice.

The two plaintiffs who were issued notices of right to sue but did not file suit within 90 days of the date of their notices also are entitled to maintain this action. The commencement of the *Freeman* putative class action suspended the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action. *American Pipe & Const. Co. v. Utah,* 414 U.S. 538, 554 (1974); *Crown, Cork & Seal Co. v. Parker,* 462 U.S. 345, 354 (1983). When a party who has filed a charge with EEOC receives a notice of right-to-sue while a putative class action is pending, the 90 day period for filing suit does not run. *Crown, Cork,* 462 U.S. at 345. Filings by the *Freeman* plaintiffs support invocation of the single filing rule even though the original *Freeman* plaintiffs

are not parties to this case. *Tolliver*, 918 F.2d at 1057. In *Tolliver,* the Second Circuit held that under the ADEA the single filing rule is not limited to those electing to join pre-existing lawsuits. 918 F.2d at 1057. "The purpose of the charge filing requirement is fully served by an administrative claim that alerts EEOC to the nature and scope of the grievance, regardless of whether those with a similar grievance elect to join a pre-existing suit or initiate their own." *Id.*

Where grievances are alleged to arise throughout a large group, as in this case, the single filing rule applies if the charge includes 'some indication that the grievance affects a group of individuals defined broadly enough to include those who seek to piggyback on the claim." 918 F.2d at 1057. It is not necessary to explicitly mention that a representative action is contemplated. *Anderson,* 852 F.2d at 1016. The questionnaires, affidavits, and charges filed by Mr. Freeman and other couriers beginning in 1996 put EEOC and FedEx explicitly alleged that FedEx had engaged in a nation-wide pattern of discrimination against older couriers. Plaintiffs' Exhibits 1, 2, and 6. Where specific allegations have been edited out of the charge by the EEOC, these documents serve as evidence of the scope of the issues upon which the charging parties exhausted remedies. *Wilkerson, v. Grinnell Corporation,* 270 F.3d 1314, 1318 (11th Cir. 2001); *BKB v. Maui Police Dept.*, 276 F.3d 191, 1102 (9th Cir. 2002). It was not Freeman and Maccia's responsible to provide notice to FedEx- it was EEOC's. 29 U.S.C. § 626(d). Moreover, any distinctions among a questionnaire, an affidavit, and a charge do not affect the statutory rights of the plaintiffs because the guiding principle for construing the charge-filing provisions of Title VII and the ADEA is that this is a "statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." *Love v. Pullman Co.*, 404 U.S. 522, 527 (1972).

The charge filed by Plaintiff Robertson also put Defendant on notice of his claim. Defendant asserts that Robertson was sent a right to sue letter more than 90 days before he filed this suit. However, he never received a copy of that letter; EEOC did not send it to his current address. Plaintiffs' Exhibit 5. When the date of receipt is challenged, there is a rebuttable presumption that the letter is received three days after it is mailed. *See Sherlock v. Montefiore Med. Ctr.*, 84 F.3d 522, 525 (2d Cir.1996). The presumption may be rebutted, "by admissible evidence, such as an affidavit by the claimant stating the actual date of receipt (or ... lack thereof)." *Peltier v. Apple Health Care*, 130 F. Supp.2d 285, 291 (D.Conn. 2000). Actual receipt of the right-to-sue rather than constructive receipt by the charging party commences the period. *Id.; Jones v. Madison Serv. Corp.*, 744 F.2d 1309, 1312 (7th Cir. 1984). Robertson's 90 day period of time for filing suit did not begin to run until approximately February 10, 2002, when he actually received notice of right-to-sue. This case was filed on April 29, 2002 less than 90 days later. Plaintiffs' Exhibit 8.

The questionnaire and affidavit submitted by Plaintiff Kennedy in December 3, 2001 are the equivalent of a charge. The ADEA requires that a timely complaint be filed with the EEOC. 29 U.S.C. § 626(d)(2). EEOC regulations define a charge filed under the ADEA as "a statement filed with the Commission by or on behalf of an aggrieved person which alleges that the named prospective defendant has engaged in or is about to engage in actions in violation of the Act." 29 C.F.R. § 1626.3. Plaintiff Kennedy's questionnaire and affidavit fulfill those requirements.

Furthermore, the affidavit form states that the document would not be disclosed as long as the case "remains open"

from which a reasonable person could infer that a case was open when the affidavit was submitted. Plaintiffs' Exhibit 6.

Ms. Kennedy's questionnaire is sufficient to preserve Plaintiffs' right to sue on all systemic acts of age discrimination alleged therein, except that Plaintiffs terminated more than 300 days earlier could not use the questionnaire as a basis to challenge their terminations. In *Morgan,* the Supreme Court left open the question of whether a continuing violation can be raised based upon systemic discrimination. *Morgan v. National Passenger Rail Road Corp.*, ___U.S. ___, 122 S.Ct. 2061, 2073, n.9 (2002). The Second Circuit has held that allegations of a systemic violation invoke the continuing violations doctrine and toll the statute of limitations. *Gomes v. AVCO Corp.*, 964 F.2d 1330, 1333 (2d Cir.1992). Even if the questionnaire were, in some way, not the equivalent of a formal charge, those deficiencies would be cured by the relation back of the charge, filed on May 30, 2002. *Edelman v. Lynchburg College,* ___ U.S. ___, 122 S.Ct. 1145 (2002).

Finally, the formal charge plaintiff Kennedy submitted on May 30, 2002 preserves her rights, the rights of all other plaintiffs employed by FedEx within the previous 300 days, and the rights of all other Plaintiffs as to all job actions except terminations. A complainant need wait only 60 days from the time of notifying the EEOC before filing suit under the ADEA. 29 U.S.C. § 626(d); *Hodge v. New York College of Podiatric Medicine,* 157 F.3d 164, 168 (2d Cir. 1998). More than 60 days have now passed since the filing of the formal charge on May 30, 2002. No purpose would be served by dismissing this case, to be refiled based upon the May 30, 2002 charge. *Hodge*, 157 F.3d at 168. In that case, the Second Circuit held "because Hodge's federal ADEA suit would not have been time-barred had he chosen to refile or

reopen his never-acted-upon EEOC charge, it would make no sense to hold it time-bared where we have dispensed with the need to refile or reopen the charge. *Id.*

CONCLUSION

For the foregoing reasons, the Court should deny Defendant's motion to dismiss the complaint.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
Southern District of New York

02-CV-3355 (LMM)

[Filed August 6, 2002]

Paul Holowecki, Patricia Kennedy,	)
Donna M. Lewis, Charles Moncalieri,	)
Phyllis Nelson, Andy Kubicki,	)
Elizabeth Tucker, Steven Almendarez,	)
Frank J. Martinez, Kelly L. Martinez,	)
Kevin McQuillan, Kenneth G. Mutchler,	)
George Robertson, and Nancy Trompics,	)
individually and on behalf of all others	)
similarly situated,	)
	)
Plaintiffs,	)
	)
v.	)
	)
Federal Express Corporation,	)
	)
Defendant.	)
	)

PLAINTIFFS' EXHIBITS SUBMITTED IN OPPOSITION TO THE DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

1 EEOC Questionnaire and Affidavits of Gerald Freeman

2 EEOC Questionnaire and Affidavits of Vincent Maccia

3 Excerpts from Complaint in *Freeman et al. v. Federal Express Corporation*

4 Defendants' Motion to Dismiss Plaintiffs' Complaint or, in the Alternative, to Strike the Complaint *In Toto* in *Freeman et al. v. Federal Express Corporation*

5 Declaration of George Robertson

6 EEOC Questionnaire and Affidavits of Patricia Kennedy

7 EEOC Charge of Patricia Kennedy and Transmittal Letter

8 Record of Delivery of Complaint in Instant Case

EEOC USE ONLY

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

Name (Intake Officer)

Please answer the following questions, telling us briefly why you have been discriminated against in employment. An officer of the EEOC will talk with you after you complete this form.
Birth:[REDACTED],1960
(Please print) SSN: [REDACTED]4266

NAME: Gerald D. Freeman
(First) (Middle Name or Initial) (Last)

Date: 06-05-1996

ADDRESS: 2700 Bayshore Blvd. #5105
Phone No. (include area code): (813) 733-2053
CITY: Dunedin STATE FL ZIP CODE 34698

Please provide the name of an individual at a different address who is in the local area and who would know how to reach you.

NAME: Elizabeth Wood RELATIONSHIP: Friend
TELEPHONE (813) 736-0065

ADDRESS: 950 Broadway CITY: Dunedin
STATE FL ZIP CODE 34698

Why do you believe this action was taken against you? (e.g., Race, Color, Religion, Sex, Age, Disability, or National Origin.)
The Discrimination based upon the Company's belief they can become more cost effective with a younger work force.

What action was taken against you that you believe to be discrimination? What harm, if any, was caused to you or others in your work situation as a result of that action? (e.g., Discharge, Discipline, or Harassment) (if more space is required, use reverse.)

Federal Express by Instituting a "New" check-riding procedure and other "New" methods and Policies under the guise of their *Best Practices Pays* Program has, in effect, abandoned many of the principals under which we were first employed. One such principal/*guarantee* has been reinforced annually via Survey-Feedback Action (S.F.A.) question # (see other side)

I believe I was discriminated against by: (Check those that apply)

☒ EMPLOYER

NAME: FEDERAL EXPRESS CORPORATION
ADDRESS: 1881 MAIN STREET
DUNEDIN, FL
PHONE: (813) 736-6727

Approximate number employed by this employer: NINETY

What was the most recent date the harm you alleged took place? APRIL 22, 1996

Are you now employed by the employer that you believe discriminated against you?

YES:
FROM: 7-27-82
(Date)

CURRENT POSITION:
Courier $14.49/HR.

Finally, your identity will be disclosed to the organization which allegedly dismiminated against you.

You ☒ Consent or ☐ not consent to such disclosure?

Have you sought assistance about the action you think was discriminatory from any Government agency, from your union, an attorney, or from any other source?

☒ YES if answer is yes; complete below.)

THE OF SOURCE OF ASSISTANCE: INTERNAL GFTP
DATE: APRIL 26,1996

RESULTS, IF ANY: WENT THROUGH STEP 1 PROCEDURE AND LOST DUE TO MANAGEMENT'S DECISION TO OVERLOOK ANY ASPECT OF DISCRIMINATORY MOTIVES; DECLINED STEP 2 FOR OBVIOUS REASONS. SEE, EXHIBIT "A", IN AFFIDAVIT, ATTACHED.

Have you filed an EEOC charge in the past? ☒ NO

☒ DATE FILED:
SIGNATURE /s/Gerald D. Freeman

DATE June 6, 1996

EEOC Form 283

"CAN BE SURE OF A JOB IF I DO GOOD WORK"

Implicit in this statement is a promise that if I do a good job...I will always have a job. Now, after back-to-back record "after-tax" profit years, Federal Express wants to take it all back and say that those performance reviews you received (in those years and earlier) were gifts by laxidaisical management teams which were misguided into "giving" superior on-road performance ratings (i.e. 7.0, the highest) when they should have been giving out the minimum level of accepted performance, 4.0 or lower (i.e. the NEW standard raised the productivity *goals* in both cycles — thus an person could be performing under the minimum level, 3.9 or lower). And so, one day we were getting bonus pay for "X" amount of stops per hour and the following day, that same amount of work was insufficient for job retention!

Accordingly, I believe the "NEW" check-ride procedure was designed to promote discrimination by management against older employees. There is a greater frequency of check-rides to older employees, without reasonable cause (i.e. drop in performance; sufficient change in customer base; sufficient change in route boundaries; traffic; just in time for your performance review; etc.) when younger employees are taking to the road without as much training as in the past and thus their techniques or lack thereof would suggest that they should be the ones having a greater frequency of check-rides. Management has a sufficient data base to determine how many stops you have run and are capable of running over a long period of time. They know your maximum capabilities, then they ceremoniously go through the motions of a "more thorough and object formula for arriving at your *NEW GOALS*, which are *HIGHER* than your previous 13 week average. Thus, in order to save your job, you must some how beat your average every week or face the axe. What is the

immediate harm from such action, as previously stated, that productivity level that once was good enough to warrant bonus or PRO-PAY (which management has used to compare with U.P.S. annual raise, citing superiority when pro-pay included just as if it was a raise, some $1,500.00 plus annually) is not good enough to keep your job! And of course, all the while you are not making *their* goals (or making them, it doesn't seem to matter) management is harassing you with performance reminders and more check-rides. My last check-ride (April 3, 1996) had all the earmarks of harassment (provocation to make an outburst which would have lead to a suspension). The threat of an EEOC complaint has slowed the check-rides, however, my manager has suggested one is imminent on several occasions inferring it was my idea. Recently, management has designed a new form of harassment, one with a familar pattern of entrapment — a planned outburst. It was the old *good cop/bad cop* routine played out in the form of management first wanting to change my sort assignment only, then moving back my start time in order to cut my hours by 2.5 hours per week (See Affidavit, Exhibit "A" for GFT internal action taken). Instead of getting heated up by the frustration of it all, I chose to de more than threaten an EEOC compliant. But management has other "performance reminders" flooding your emloyee file where the training/re-training for such "NEW" Best Practice Pays Methods *is* another performance reminder. And if they can't get you fired for a "planned outburst", then they will still have your declining on-road performance (via "NEW" check-ride procedure) and *other* performance reminders to cumulatively say, *you are a poorly performing courier that should be terminated.*

PRIVACY ACT STATEMENT

(This form is covered by the Privacy Act of 1974; Public Law 93-579. Authority for requesting the personal data and the uses thereof are given below.)

1. *FORM NUMBER/TITLE/DATE. EEOC FORM 283, Intake Questionnaire, August 1987.*

2. *AUTHORITY. 42 U.S.C. § 2000e-5b, 29 U.S.C. §211, 29 U.S.C. §626.*

3. *PRINICIPAL PURPOSE. The purpose of this questionnaire is to solicit information to enable the Commission to avoid the intake of matters not within its jurisdiction.*

4. *ROUTINE USES. Information provided on this form will be used by Commission employees to determine the existence of facts relevant to a decision as to whether the Commission has jurisdiction over potential charges, complaints or allegations of employment discrimination and to provide such pre-charge filing counseling as is appropriate. Information provided on this form may be disclosed to other State, local and federal agencies as may be appropriate or necessary to carrying out the Commission's functions. This would include employment practices laws. Information may also be disclosed to charging parties in consideration of or in connection with litigation.*

5. *WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION. The providing of this information is voluntary but the failure to do so may*

hamper the Commission's investigation of a charge of discrimination. It is not mandatory that this form be used to provide the requested information.

STATE OF_____ CASE NAME_____
COUNTY OF _____ CASE NUMBER_____

AFFIDAVIT

I, GERALD D. FREEMAN , being first duly sworn upon my oath affirm and hereby say: I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 45 years of age, my gender is male , and my racial identity is Caucasian .

My date of birth was [REDACTED], 1950 . My Social Security number is [REDACTED]-4255 .

I reside at 2700 Bayshore Blvd. Unit 5106 . City of Dunedin , County of Pinellas , State of Florida , Zip Code 34698 .

My telephone number is (including area code) (813) 733-2053 .

My complaint is against Federal Express Corporation , which is located at 1881 Main Street , in Dunedin Florida 34698 . Its telephone number is (including area code) (813) 736-6727 . My job classification is (if applicable) Courier . My wage is $14.49 per hour . My immediate supervisor is (if applicable) Louis J. Fusco - Manager Operations .

For the past 16 months or more, Federal Express management, principally in Dunedin and Orlando (District Office), has singled out myself, and others so situated, for the express purpose of "building a profile" of an employee who performs poorly and should either be terminated and/or harassed into *voluntary retirement*. Through the institution of "new check-ride procedures" based upon "Best Practice Pay Methods" management has sought to not only raise our stops/hour productivity work load in both of our cycles, but more importantly, they have *re-classified and demoted* that level of performance which was previously considered **above average to excellent** to *the minimum level of performance acceptable for job retention.*

Thus, if you are already performing at a 100% plus level (and to achieve pre-"new" check-ride performance higher ratings, it took some kind of dedication-contrary to current management's belief) and THEN they implement an even higher quota as a MINIMUM ACCEPTABLE level of performance; ***your future employment is in jeopardy as you are a couple performance reminders*** (informing you your below the minimum level of performance and what action do you plan to bring up your current sub-standard output) ***and a judgment day*** (the third and final request to raise your performance — your to specify how and when you will achieve your agreed-to level of performance) ***away from termination or retirement.***

And all the time management is building a file of poor performance in methods and paperwork with the same "performance reminder" about mistakes being made where "no training" or "retraining" or knowledge is made available during work hours as to the *"new 'right' acceptable methods"*. We are also receiving "performance reminders" for our electronic scans not being in compliance (alleged

missed scans) even though its common knowledge that the system and the equipment are not even close to being 100% accurate and to make matters worse, the person in charge of equipment repair (Leap Candidate for Management position as well as a courier who has very few courier duties due to his unique job — station team leader) is the SAME PERSON HANDING OUT *THE PERFORMANCE REMINDERS.* And although he and management claims such "performance reminders" are not going to be used for disciplinary purposes rather for locating and solving "root" problems, clearly, the purely system problems as well as the other ones are still being directed at and blame attached to the individual and with the finger pointing squarely at us, we are being asked what we can do about it (and when we suggested how we could track system error from courier error, our station manager said we would merely cheat by inflating our scan count—just as if we could guess how many scans the computer system will drop each day/most of the time it would be zero, thus her logic, although clearly negative, would have us out of compliance more often than we are now if we would attempt such a ridiculous thing—but her statement, more importantly, demonstrates management's desire to continue to place blame on us—so they can build their case of poor performance. And when it comes to review time, you can bet the farm those "performance reminders" will re-surface as ammunition for getting a poor score in such appropriate categories; and all those "root" causes will be forgotten/not assessed as the only thing you will see will be numbers!

Additionally, our mandatory Annual Courier Job Knowledge Test which was not previously included in your review except as pass/fail and which allowed you to study TWO hours prior to testing and then TWO hours after the test so you could review those areas where you missed some questions (pre-subscription training), **NOW**, the "NEW"

Courier Job Knowledge Test is counted on your review and is given twice a year...but with ONLY one hour of study before the test and ZERO hours of pre-subscription training (can't discuss test questions with other couriers or face termination)—so you can continue to miss the same questions over and over again and if you fail the test and don't succeed on the second test—you're out of your courier position, effectively, you've been terminated.

Furthermore, management has continually harassed me over the past 70 weeks with 10 needless check-rides (and when one considers I was not available to be check-rode for over 32 of those weeks: left and right knee surgeries and rehabs, six weeks on a different route [no check-ride there], vacations and other days off). Ten check-rides in approximately 38 weeks can not be justified, the route didn't substantially change and even my supervisor admits my numbers over that period are very consistent. So what was the real reason even beyond harassment for the last five (since January,1996), management has tried every which way to get me to sign a form ***accepting*** my higher productivity goals *while acknowledging them as a minimum acceptable level of performance for job retention.* After the April 3, 1996 check-ride, my manager went so far as to ask that I just sign the piece of paper that such "goals" were depicted...just to acknowledge we had this discussion, I respectfully declined, stating that wasn't the Federal Express procedure for acknowledging a couriers refusal to sign anything—I went to the open door of the supervisor next door and requested he sign the back of my timecard noting such a meeting took place—he said fine and he did it! It doesn't take a genius to figure out what deceptive practices management was attempting to perfect. I don't believe I'm a paranoid person!

My manager on several occasions has stated, "I would not set you up to fail". However, all of his and other management actions would demonstrate an entirely different conclusion. As previously stated, this is not the first time I have considered filing and/or discussing my concerns, March 7-8,1996 and April 8,1996, respectfully, and I am in the process of typing up those notes upon the completion of this complaint (will keep original hand written notes). My reason for not following through with such concerns was the climate around the station made me fear for my job; so I thought it better to continue to observe, hope Mr. Jasper Crawford's investigation could spell us some relief and with my apparent threat of going to the EEOC, that management would step back from their confrontations. But I was wrong.

Are all of the things just described being applied evenly to younger employees—absolutely not! But even if it may appear on the surface that such is the case (i.e. they get check-rides-not as often; they get performance reminders-but no big deal is made from them; they even make a lot of mistakes a seasoned courier wouldn't make and management just looks the other way citing their inexperience), management has the option to bear down on the older employees and it does (i.e. electronic scan compliance; international air bill audits; etc.) And as to the ***purely objective*** "New Check-Ride Procedures" (i.e. from the Feb. 29, 1996 check-ride, I received a "performance reminder" for March 1,1996 of substandard work as "WE" had agree to (didn't happen)—***it first had a stop/hour rate for mix cycle of 9.8, then whited out it was raised to 10.0,*** then the following week I received another performance reminder with 9.8 stops/hour—then after my April 3,1996 check-ride, Lou said he was lowering my mixed cycle to 9.8 to reflect my concern I would be just working against my own numbers—so much for non-subjective judging system to arrive at your goals),

management sells it strong, but doesn't practice it except against senior couriers, otherwise much of our younger employees wouldn't still be around as they have been known to take out 10 stops and make a day of it!

Now, in this last month, management has once again decided to step up their harassment/discriminatory practices against me by displacing me from my early morning start time notwithstanding their partial acknowledgment that such action was contrary to their own policies and procedures. It was that action that precipitated this complaint process (See, full account of Federal Express internal action taken [GFTP] and the subsequent result, Exhibit "A"). Since March 3,1996, I have threatened to file this complaint and went so far as to enter Federal Express' pre-EEOC Discussions regarding management conduct (i.e. March 7th and April 8th). My discussions with Mr. Jasper Crawford relating to an ex-Federal Express employee in late February caused me to take a much harder look at what was happening (currently). It should be noted it was my reflection of what I said and not anything Mr. Crawford said, which caused me to reflect upon my present situation—to take everything more serious because of the atmosphere at the workplace. I just had TWO check-rides by two different supervisors from two different stations and they were meant to be intimidating, but the follow-up meeting did not take place like previously held check-rides *by management in your own station.* I started taking notes after discussions with management and being a lot more guarded in my conversations with them as they were gunning for people to step out of line so they could suspend them. And then came the annual Survey Feedback Action for 1996. To demonstrate how innocent/open and fair management is, our company has the SFA so management can improve their skills, and of course, it is **strictly confidential and voluntary**. However, it is currently neither of those two things; quite possibly, it

never was! I did not participate in either taking the survey or in the feedback process. I felt the program severely lacked integrity (the computer log-in time along with the manual time card entry would be link enough to *I.D.* your answers and even if you just logged in and decided not to respond to any questions, they could know that too...additionally, the pre-statistical general data: male/female; years of service; etc. would further narrow and define the owner of such responses-but like they say, those questions are optional too, however; no response there could also have a narrowing affect). This years' SFA started out much different than past years, people seemed indifferent and pretty apathetic as our station approached the final week before it must be completed (even management, beyond the daily reminders for everyone to complete it commented on the small number of participants—less than 50%. Then management began a little arm-twisting campaign to increase the turn-out. If this system was confidential and voluntary, how did management know who to approach—**business picked up**. It surprised me how many didn't take it! One such individual who resisted the arm-twisting campaign *even after being singled out,* was questioned by the Senior Manager about why she did not want to take it. And she was later asked (ops manager) if *anyone tried to influence her into not taking the SFA?* Without saying my name, management was pointing a finger right at me; the courier told that manager it was her own decision not to take it. I didn't try to influence anyone, although I probably could have converted a few. I did discuss the virtues of gaining a greater influence by a subtle form of "civil disobedience"; in other words, by not taking a purely voluntary survey of management's performance, no response might peak more interest and movement by UPPER management to investigate...whereas, if most take it and even if most scored management poorly, the fact most took it would signal a believe that the message will be heard and action taken-

business the same as usual! I spoke these words to the courier in charge of the administering the Survey; the walls have eyes and ears (i.e. cameras and sound recording...according to some) even if he didn't pass the message on to our Senior Manager. So was I the object of the witch-hunt being conducted? Management sure has great respect for strictly confidential and voluntary.

Management has been fairly clever in disguising its master plan "to set us up to fail" (senior couriers) so we will either quit/retire out of disgust or work under the stress and possibly go too fast— make a big enough mistake so they can terminate our employment by allowing them to build our file to the point where our credibility is zero...so we are on the outside looking in, like the ex-Federal Express employee Mr. Jasper Crawford is trying to help. I know I'm still an excellent employee for Federal Express and regardless of what the "NEW" numbers say I know I'm not a minimum performing courier, notwithstanding my two knee surgeries last year. I do not believe management would treat me or any other senior courier differently as far as their master plan is concerned. It's been my observation, how they go after the individual and in what priority they seek that individual, depends upon that person's particular circumstances and their opportunistic ways (i.e. after my 1st knee injury...I noticed a different attitude in how management treated me).

I have read and had an opportunity to correct this Affidavit and Exhibit "A" that together consist of ____ handwritten [ ] typed [ ] pages and swear that these facts are true and correct to the best of my knowledge and belief.

_____

Before me, the undersigned authority, personally appeared _____, who being duly sworn, says under oath that the matters and facts set out in the above document, consisting of _____ pages, true and correct to the best ofhis/her belief.

Sworn to before me, this ____day of _____, 199__, who has produced _____as identification.

My Commission expires: _____

(Notary Public)

Exhibit "A", part I

GUARANTEED FAIR TREATMENT

RE: AGE DISCRIMINATION IN THE WORK PLACE

For the record I'd like to state I've always been flexible when it came to fulfilling the operational needs on the a.m. sort (i.e. from a very early start time, 0500a.m., in order to go the ramp for over-flow boxes and documents to sorting documents for call in sick to loading several trucks from the belt for routes not adjacent to my current route.) The A.M. Sort has always been explained as a seniority status position regarding early start times and assignments.

In fact on Thursday, April 18, 1996, I received a message from the CLW station (rt 196) requesting I call them ASAP (msg received approx. 12:45 P.M.) regarding the new sort assignments and my status as the most senior employee involved in the particular section of the sort they (management) was working on at that time. And, within five minutes I stopped my mixed cycle (not knowing the subject matter of such urgent matters) and called the station asking to speak to Andy or Lou (ops mgrs) per the message on the Dads screen. Ardy answered the telephone thanking me for responding so quickly and stating management's urgent need to know what my feelings were regarding the sort assignments they were reorganizing. My current box sip scan position was being taken over by a causal employee moving down from off-loading the cans on top and they were offering me, due to my seniority status – per Ardy's words, a 0705 A.M. start time slot sorting the documents from my area or I could choose to start at 0735 A.M. doing my own truck. I told Ardy I would prefer to start at 0705 A.M. and do the envelope sort; he again thanked me for my promptness and

said next weeks schedule would reflect my new work assignment at the 0705 A.M. start time. It should be noted that the previous day, April 17th, as well as that day, Thursday the 18th and Friday, the 19th, my start time had been changed by Terry Galloway, our senior manager, to exclude me from the sort by crossing through my 0705 A.M. start time and writing 0735 A.M. above it, but I was told that was a mistake.

When I returned to the building that Thursday afternoon (after Ardy's call), I looked at next weeks schedule to see if it reflected my new 0705 A.M. sort assignment and it was so posted for all of that week. The following day, upon returning to the building, I again looked up at the schedule to see what the new sort number designation translated to mean regarding my new assignment. And now to my amazement this *"new"* schedule had me off the 0705 A.M. sort and starting at 0735 A.M. every day of the new week (April 22-April 26). I was upset as to the result as well as the handling of the change (urgent message please respond ASAP). I approached Lou Fusco, my Manager, to find out how and why all the games and nonsense. He claimed he didn't understand what was going on but he would find out–they were all in the conference room again trying to work out the A.M. sort. When I appeared at the door both Terry and Lou chimmed in: "If I don't hear from Lou before Monday, come in at 0735 A.M. per the new schedule." Sometime Saturday afternoon, while I was away from my house, Lou did call and said I was suppose to report Monday for the 0705 A.M. sort.

On Monday before the 0705 A.M. sort started, I went over to the schedule and noticed my start time for the week was 0705 A.M. But when I returned to the building after I had completed my route, the *newly revised* schedule now showed my same Monday 0705 A.M. start time, however, the

remainder of the week again reflected the 0735 A.M. start time. Once again I set out to find my manager to discuss this latest charade. I found him with Ardy in our meeting room and he again stated he didn't understand what his boss was doing and with my seniority, I have a right to be upset. He asked me if I could please come in as scheduled (0735 A.M.) tomorrow, April 23rd and he would again find out what is going on – I didn't have any choice, so I said I would.

Later that evening I decided to go ahead and show up at 0705 to see if all the teacher's pets got their usual 0705 A.M. start for the slowest day of the week (P.M. over-time champions, Ron Margolis and Larry Horton). It's Tuesday morning, and *guess what,* no surprises here: they're both there waiting to start at 0705 A.M. – of course, all of their time will be for time and a half in the morning, as they have their full time routes to run later. *Best Practice Pays* if your're young and they like you! Ardy observed me sitting there and asked me to start at 0705 A.M. – he said three people called in sick. I suppose that would account for Ron and Larry being *johnny on the spot*, real lucky they were just hanging around 4 hours before their full shift on the slowest day of the week. When I went back to the documents sort area after the weekly A.M. Meeting, stretch-n-flex and vehicle pre-check, I noticed 6 casual topside off loading boxes (real cost effective there) and no one really seemed to know where I was to fill in . . . then I saw table four full of docs and no-one there to scan them, so I jumped right in there, just where I was going to go had the original ASAP call plan had been carried out.

So where does this scenario lead us:

1. I'm more senior than our groups' present document sorter by 45,000 employee numbers and its her spot they

asked me to stand in for when she calls in sick, which has always been excessive, but who counts;

2. As to the casual employees moving down from their traditional box off-loading positions, these quasi-employees were hired to cargo handle because regular couriers didn't want to do that job and they they try to go out and meet their customers with offensive body oder. They were also hired for peak season to deliver bulk stops, etc. in order to make the best possible service commitment for the holidays. But now after peak, management comes to us and ask us to recommend people for them to interview and hire for what? Cost can't be the issue, there are so many of them falling over each other, all the while our inbound and outbound package counts continue to decrease as more and more snowbirds (six month) residents go northward each day. Can these casuals even scan the documents as effectively as us *older employees*? They can scan the bar code as well as anyone, however, then putting them in the proper basket . . . even if the shipper had a bad zip code or used a P.O. Box zip code. I know they can't do it as well. But this is not about qualifications, cost or even seniority. This is about trying to push older couriers a step closer to the door by pinching their wallets (2 ½ hours a week) and adding stress beyond the new productivity goals, etc. These younger casual employee are not going to stay with Federal Express for 5-7 hours a week in a non-status position. These non-status employees will not have the patience to wait for us older employees to decide to retire several years down the road. But management doesn't want to wait either! And by their words and actions, they have made it very clear . . . they intend to dictate to us when and how we will step down!

3. And finally, our *"over-time champions"*, like the over-abundant casual help, demonstrate that *cost isn't the issue* and

likewise, neither is seniority – except as to the negative implications of such seniority. Was Wednesday, April 24th or Thursday, April 25th any different for the *"over-time champions"*, no, they started before the 0735 full timers even though they would be making time and a half for every minute they worked on the sort. The use of these individuals conclusively demonstrates that management will pay more in the short term in order to keep up the stress on its older employees, keep them moving a step closer to the door.

It is strange how a *people company* could engage in such activity knowing that such pressure will shorten careers, but it will also lead to increased accidents and injuries to these same individuals that made Federal Express what it is today.

Respectfully,

Gerald D. Freeman
FedEx EE# 22703

cc: Senior Manager Terry Galloway
Operations Manager Lou Fusco
Jasper Crawford, EEOC

Exhibit "A", part II

GERALD D. FREEMAN
FEDEX EE #22703
2700 Bayshore Blvd. #5106
Dunedin, FL 34698
(813) 733-2053

May 13, 1996

Mr. Marco Chan
FDX/Sunshine Dist. Office
450 East South Street ste 300
Orlando, FL 32801
(407) 246-6700

Dear Mr. Chan:

With regard to your overnight letter of May 9, 1996, I must respectfully decline to fill out and engage in Federal Express' very own GFT/EEOC process. I realize how desireable it would be damage control purposes to be able to guarantee containment of such a growing and violatile issue. As you already know via your copy, I have already respectfully declined this same offer via another overnight letter from my immediate supervisor, Lou Fusco, dated April 30, 1996; sent to my home while I was out-of-town on vacation. And before that on April 8, 1996, I also respectfully declined this same assistance regarding the harassing check-ride policy you instituted in order to get us to sign off on productivity rates which once were considered superior but now due to "THE CHANGE IN POLICY", the same productivity rates are considered the minimum performance allowable for the *job retention*. I really believe any individual should not have to decline anything for a *third*

time, as such conduct should in-an-of-itself constitute harrassment!

However, because you brought this up and maybe someone further down the road might not be able to "SEE" reality for what it's worth, I'll try to briefly explain my reasons for the loss of confidence in the entitled heading of the document (i.e. GFTP/EEO) to wit you command me to fill out and return to you by May 14, 1996 (I did read the section titled, "Your Responsibilities", in the packet – but I desire a more independent and thorough examination of the charges):

1. Guarantee fair Treatment (i.e. GFT part of EEO pamphlet) does not stand for the same thing it once did:

I was on a GFT panel many years ago regarding a courier at CLW, who only knew because his mother-in-law and my wife were friends and she knew me to be a fair and honest person – by the way, I was working at the TPF station at the time. That proceeding almost ended without formal vote because the evidence was so overwhelming against management's contention that this courier was extorting food for special treatment (i.e. earliest possible Saturday delivery, paychecks enclosed); however, the chairperson expressed his confidence (orally) that all panel members – including two Senior Managers from South California and New Mexico, *would vote responsibly* according to the evidence received that day . . . it was a unanimous decision against management's decision to terminate this employee!

2. Years later this same employee is again terminated under the leadership of a person who openly vowed to get him for his reversal of management's decision. The circumstantial evidence was again about the same "quality" as in the first GFT proceeding, however, this time there was no reviewing panel of his peers (3 members) and two members of management. And at his unemployment hearing (which was recorded) CLW management, the company's attorney, as well as Memphis, demonstrated their true colors by telling an Administrative Hearing Office under oath that the reason why this person was terminated (where other couriers were not, even though, they admitted to similar, but more aggrievous conduct) – was because he had a ***"Life-Time Warning Letter"*** in his file from the GFT proceeding he had won due to the ***make-up*** of his reviewing panel: three couriers voted for him – two management members voted in favor of the ***evidence***!

3. The ***"Guaranteed Fair Treatment"*** *process was violated several times by that one act:*

A. Procedurally speaking, the outcome of an empaneled review, the vote, ***should have never been disclosed***, per the governing rules of such Federal Express GFT process;

B. The *"concept"* of retaliation for winning a GFT ***on a secret ballot***, notwithstanding the LIE about the actual outcome, is also contrary to the GFT's ***stated purpose*** and ***confidence*** in the process;

C. There is no such thing as a ***"Lifetime Warning Letter"***; Federal Express' attorney (at the

proceeding), CLW management and the personnel representative at the hearing ***knew*** this was an perjured statement, as did the terminated individual who was not permitted legal counsel at the hearing, otherwise, his then 2nd GFT case would have been automatically terminated by the appearance of counsel – what a clever twist/rule to have for ***"Guaranteed Fair Treatment"***: The Company can have legal counsel – the employee can't ...I wonder what our founding fathers would have said about the GFT Rule; and

D. In the final stage of this individual's second and final GFT Step Process, I was interviewed by telephone (via top Memphis Personnel, alleged assistant to the Director) due to a statement management asked me to make during the early investigation into this person's termination proceeding. I told this individual that my statement was correct to the best of my knowledge (i.e. that I had heard other couriers had a ***habit*** of doing what that person was terminated for and *yes*, these words were expressed to me long before this ever became an issued), however, I was very disturbed about he perjury Federal Express committed at a legal proceeding and I told her how I had personal knowledge of how and why it was perjured testimony. She said they heard the tape recording of the proceeding and whereas that conduct was deplorable, I did not know all the facts in the case and therefore, I could have no know way of knowing whether he was guilty of doing the acts charged. I asked her is she really believed ***the end justifies the means***. I also asked her how she could have any confidence in management's case if they would make up such a

desperate lie. She again assured me I didn't know all the facts!

Well, Mr. Chan, I'll tell you what facts I am aware of: Federal Express ***does not*** play by the rules and hasn't for a long time - it's too costly... which really brings us back full circle to where I am today with my on-going problem. Senior couriers are too costly, thus management's push to harass and discriminate regardless of the rules or our contribution throughout the years. I know what your thinking, If you feel that way about the GFT process and Federal Express, why don't I leave! That concept has been verbalized many times by our current Senior Manager! It would certainly make your task easier if all of us would take the "easy road" and leave on good terms, before Federal Express builds its case (our personnel file) against us as poor working habits/poor attitude, ***"typical of older employees"*** ... I remember hearing that a few years ago, saying it would never happen to me. Well, with my eyes now ***wide open***, I can now see it really didn't happen to them - back then, management just painted the picture and the younger employees believed - in the image painted. "Federal Express is one of the TEN BEST Companies to work for in the U.S." and with Guaranteed Fair Treatment" and their own EEOC department to ***ensure*** Federal Express remains a ***PEOPLE*** Company, who could ask for anything more!

Respectfully,

Gerald D. Freeman

Exhibit "A", part III

Marco Chan
Managing Director
Sunshine District

Federal Express Corporation
450 East South Street
Suite 300
Orlando, FL 32801
Telephone 407-246-6700
Fax 407-425-1470

FedEx
Federal Express

VIA FEDEX OVERNIGHT LETTER/ Received 5-17-96 at CLW Station GDJ

May 16, 1996

Mr. Gerald Freeman
2700 Bayshore #5106
Dunedin, FL 34698

Dear Gerald:

On Wednesday, May 15, 1996, a Step I GFTP conference call was conducted. You and I were on the call as well as Terri Galloway, CLW Senior Manger, Lou Fusco, CLW Operations Manger, and Mike Goodling, Sunshine District Senior Personnel Representative.

Before I respond to your Step I GFTP, I would like to address the issue of your allegation of age discrimination. Since you have been given ample opportunity to expound on your allegation, and you have repeatedly refused to supply any information for us to investigate the matter, and you advised

me on May 15 that you declined to utilize the internal EEO process, I am setting that issue aside.

During our Step I conference call, you stated that your main concern is that management changed your scheduled start time from 0705 to 0735 for week beginning April 22, 1996. You felt that decision was unfair, especially when your management asked you for your preference of a start time on April 18, 1996.

I did confirm with Operations Manger, Ardie Piazza, that he did ask you what your preference was; however, when CLW management finished preparing the schedule, your preference could not be accommodated. Therefore, the change of your scheduled start time from 0705 to 0735 was made. At no time, however, did Manager, Ardie Piazza, commit that your preference would be your actual scheduled start time.

You also stated that you feel that your company continuous service should allow you the earlier start time. According to the Personnel Guidelines for U.S. Ground Operations, "work assignments are the prerogative and responsibility of management and should be changed when necessary to most effectively meet operational needs. Work assignments include hours and days of work assigned, and specific duties." Therefore, I am upholding your management's decision to change your work assignment.

If you still feel that you have been treated unfairly, you may proceed to Step II of the Guaranteed Fair Treatment Procedure. To do so, you must submit a written synopsis of your complaint within seven (7) calendar days to Scott Bunker, Vice President, Southern Region, 1790 Kirby Parkway, Suite 500, Memphis, TN 38138 (COMAT: 38194/MEM/TN/3011). Scott Bunker will forward a copy of

your Step II complaint to Mary Alice Taylor. You will receive a joint response from Scott Bunker and Mary Alice Taylor. You should also submit a copy of our Step II complaint to Sunshine District Senior Personnel Representative, Mike Goodling, at 32801/ORLHQ/FL.

If you should need assistance in this regard, please feel free to contact Mike Goodling at 1-800-321-6528.

Regards,

/s/
Marco Chan
Managing Director
Sunshine District

dal

cc: Mary Alice Taylor
Scott Bunker
Terri Galloway
Lou Fusco
Mike Goodling

Exhibit "A", part IV

GERALD D. FREEMAN
FEDEX # 22703
2700 BAYSHORE BLD. #5106
DUNEDIN, FL 34698
(813) 733-2053

Mr. Scott Bunker
Federal Express Corporation
Vice President Southern Region
1790 Kirby Parkway Suite 500
Memphis, TN 38138

May 22, 1996

Dear Mr. Bunker

Please be advised I see no reason to pursue the Step II GFTP. I do not consider it to be a viable course of action as the selectivity of issues/non-issues can and does effectively diminish and/or dissipate the very reason for the filing of such a grievance and due to the inherent conflict of interest derived from one investigating and then judging oneself. Although my confidence in the GFT process was not very high (See copy of attached letter sent to Mr. Marco Chan, dated May 13, 1996), I felt like I should at least give Federal Express a chance to right itself. However, Mr. Chan's letter of May 16, 1996 to wit you were copied evidenced the exact reason why I chose not to participate in an internal EEOC-type of investigation whereby there would be *no appeal* from it's findings.

I realize Mr. Chan's anger toward me for not allowing him to contain and discredit my allegations of discrimination

within his district should have been expected. However, I am certain his characterization of what did or did not occur would have been just as one-sided as were the conclusions he managed to discover once I was prematurely ejected from the Step I GFTP conference call. Being allowed to participate in the investigative portion of the conference call whereby Ms. Galloway actually said something besides "Present", might have forced the "*seniority issue*" (i.e. went you bid on a new route the start time and sort function is often a significant reason for your selection) as well as "*the motivation issue*". But that was not to be. However, given the disposition of the "facts" to this case, I'd like to set the record straight so that if upper management should choose to rely upon them, they would do so to their detriment:

1. I did not refuse "repeatedly" or otherwise to supply Mr. Chan's office with the information necessary for him to investigate the *motive* behind the discriminatory actions taken against me. As I so stated in the conference call, all the information I had regarding this particular matter (i.e. dates, times and what was said by whom - to whom) he already has possession of and if he choose to ignore same, there was nothing I could do about it. Mr. Chan's line of questioning was as if he could not read the English language; however his intent was "to declare" what my main concern was or wasn't instead of dealing with the specific facts I outlined.

2. It seems absurd to me that Mr. Chan could infer that neither Ardy Piazza or for that matter CLW management *did not commit* to my preference to which **they solicited** based upon **their notion of propriety**. Mer. Chan overlooked one, my

conversation on the 18th of April where Mr. Piazza told me the schedule would reflect my new sort assignment starting the week of April 22nd; two, the schedule posted the next morning confirming the discussion of April 18th; three, my confronting both Ardy Piazza and Lou Fusco in the meeting room that Friday afternoon (April 19th) inquiring why my start time *now* read 0735 am, and Lou's response was; "I don't know why she (Ms. Galloway) changed it ... you have the seniority and I understand why you are upset ... I don't know what is going on, but I'll find out for you ... I think everyone is still in the conference room ... if you have a few minutes ... (and he and Ardy walked to the conference room)"; and finally, four, on the morning of April 22nd the schedule for the rest of the week reflected at 0705 am start time (upon my return that afternoon, it had once again been changed to 0735 am). There was an absolute commitment to the seniority process as well as to me for my preference **to continue** my 0705 am start time. Neither Ardy nor Lou have faulty memories about the events just described. Had I the chance to ask the right questions from all parties concerned, there would have been some different responses! My preference *could not be accommodated* as Mr. Chan so stated for other reasons which he and Ms. Galloway would rather not discuss. It has always been my life-long observation that people with something to hide don't tell the truth!

3. The third and final point I'd like to make regarding Mr. Chan's Step 1 GFTP relates to the very reason why I don't wish for this letter to

even be considered as a prelude to the Step 2 process. The process lacks integrity, neither the treatment nor the procedure is fair. I wrote Mr. Chan a certified letter to which he acknowledged receiving but choose not to comment on during our conference call of May 15, 1996 (See enclosed copy). That letter outlined why I had no confidence in management's ability to be fair in investigating an EEOC-type complaint. And Mr. Chan's response to my GFT served as a reminder that the problem (self-regulation/investigation) is not a personnel problem, but rather it's a system failure and it matters not whether we are talking about a regular GFT or a GFTP/EEO. With regard to the procedural failure, I was amazed by my Senior Manager's complete silence during my portion of the GFTP conference call, after all she was the one who went back each time and did the revised schedule with the 0735 am start times. After my departure from my manager's office, I returned to the bigger outer office to photocopy my timecard and couldn't help but notice her voice responding to Mr. Chan's questions regarding my situation. I stayed at the copy machine only long enough to copy my timecard. I could have stayed longer and taken notes, however, that would lower my ethical standards to that which is practiced every day at our station. And there is no substitute for honesty and integrity. In all fairness I should have had the opportunity to listen and speak to other conference call participants, but that may have forced them to deal with the facts and be drawn that much closer to their true motivations. Opposition to their will is not tolerated and they both make that **very**

> **clear**. I will not be bullied into indifference over how I am treated by management notwithstanding their apparent displeasure to my actions. The facts I outlined in my GFT suggest management has not been particularly "cost conscious" about making changes "to most effectively meed operational needs"; if you'll pay more for less and the group that was disadvantaged was older employees ... guess what?

I have given Federal Express some of the best years of my life and I do not deserve to be treated with such disrespect. I have exercised my prerogative to go outside Federal Express to have my age discrimination facts looked at by independent investigations. I realize this process may take quite some time, but I have always been long on patience. I seek closure on this matter so I can move on the next avenue to be heard. I understand that no retribution policy is still part of the GFTP, although we know of one incident where that was violated ... I can only hope my factual situation doesn't also warrant the disregard fo rush **guarantee**!

Respectfully,

Gerald D. Freeman
FedEx ee#22703

STATE OF _____ CASE NAME _____

CITY/COUNTY OF _____ CASE NO. ___

AFFIDAVIT

I, Vincent J. Maccia , being first duly sworn upon my oath affirm and hereby say:

I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 52 years of age, my gender is male and my racial identity is Caucasian .
My date of birth is [REDACTED]/45 . My Social Security number is [REDACTED] .
I reside at 216 Earl Street .
City of Tarpon Springs . County of Pinellas .
State of Florida . Zip Code 34689 .
My telephone number is (including area code) 813-934-2914.

My complaint is against Federal Express Corporation which is located at 1881 Main Street in Dunedin Florida 34698 .
Its telephone number is (including area code) 813-736-6727.
My job classification is (if applicable) Courier . My wage is $14.92 Per Hr .
My Immediate supervisor is (if applicable) Edward Prough Manager Operations .

In my 35 years of employment, I have never witnessed such a radical change in a company's ethical standards as set forth by the Federal Express Corporation in the past three (3) years. These changes, were orchestrated by Federal Express' Corporate headquarters in Memphis, Tennessee, to target their older work force, nationwide! No matter where my travels, in speaking with other Federal Express employees, in states such as, California, Georgia, Louisiana, Washington, Washington D.C., New York, New Jersey, Tennessee, Texas, Nevada, Illinois and within the state of Florida, the ALL displayed the same frustrations with the harassment tactics of management toward them and other senior employees. It's obvious, Federal Express' goals are to reduce their operational cost, rightly so, but not at the expense of their aging work force. This shirking of responsibility by Federal Express has to stop, the older employees made Federal Express what it is today and the liabilities follow in payroll, medical claims, workman compensation claims and the threats of Unionization!

I'm making mention of unionization because it all ties in with Federal Express' tactical ploy to reduce their older work force. Talk of unionization started approximately 6 years ago in the Northeast with the United Auto Workers, UAW. However, serious threats started approximately three years ago with the UAW and most recent with the Teamsters through literature, stickers, meetings, etc., in the Southern region. Begin aware of union activities, Federal Express, now had another reason for reducing their older work force. First, the older employee represented their most costly liability and secondly, a reduction in the older work force would minimize the threat of union organization. I've been angered by the methods management has used to achieve their corporate goal, reduction of the older work force! The pit forms, used by management for no van scans, missing POD's, right day

lates, wrong day lates, airbill errors, compliance numbers being off, etc. These are the tools management used to harass and/or build a profile against their older employees for future use, termination! I was harassed, victimized and discriminated against because of my age and affiliations with above mentioned unions. I became a TARGET!!

Since the departure of Senior Manager Mark Gaines and the arrival of the new senior manager, Terri Galloway, it was apparent that the employees/operations managers were going to change their ways or face disciplinary action and/or termination. Ms. Galloway stated at an AM meeting that most employees would accept the "New" changes and the others would find theses changes difficult. (*In with the new culture and out with the old culture.*) What she was referring to was the Best Practice Pays Program, and how it would benefit the harder working employee. Federal Express has disguised their BPP program as a tool for their employees to earn more moneys but in reality it may have benefited the few. This program is a useful parameter for management to discriminate against their older employees. In previous years this writer attained above satisfactory evaluations being rewarded monetarily as well as the acknowledgement of doing a good job. Now, under this program, an older employee that once attained above average scores on his performance review, may well be just satisfactory or unsatisfactory facing termination. The older employee is working harder, making less money and not able to achieve a sense of accomplishment, as in the past, because of this BPP program.

After one of our senior couriers filed and EEOC complaint, Ms. Galloway at an AM meeting stated that a rumor has been going around that we are "out to get you" (Older Employees). She stated that the new goals and systems were not there to terminate older employees or force early

retirement, in her next breath, she stated we would be held accountable for taking out the maximum number of Priority One stops and Mixed Stops, held accountable for Late Packages, held accountable for missing POD's, (held accountable for everything and anything that management could possibly used against you by inflating your pit form file!) Her message was clear, if you side with the rumors (new goals and systems are out to get older employees), you will be held accountable. Our senior manager's presence fit Federal Express's new image, "Best Practice Pays", No matter how you get the job done, but reducing the cost of labor via intimidation/termination was their true agenda.

There were two reasons why this AM meeting stuck with me; one, I had originally told the courier who filed the EEOC complaint that I would be a witness for him. I wondered for a long time about how confidential the process was and secondly, when the meeting was over, my senior manager, Ms. Galloway approached me on the sort belt and wanted to speak with me in front of my van. Of course her headset was on just in case I said something derogatory, she would have witnesses at the other ends of the headsets. The conversation started with her asking me "I understand you may be interested in part time?" I stated that I considered it four years ago but it would not be advantageous in regards to the benefits I would lose. She stated "Oh no" the only benefit you would lose would be if you were injured off the job, "that's all". Look into it and get back with me." More lies, that was not the only benefit I would lose nor did I appreciate being singled out. (I spoke to ops manager Ardy Piazza some four years ago about part time status) I was again angered and frustrated over the fact she never approached younger employees with this offer of part time status, more discrimination/harassment!!

It also amazes me how the Sunshine District under the leadership of Marco Chan, changed the 90 day company work rule to 30 days, whereas if you are sick or injured and exceeded that 30 day period you were displaced from your route, unless you submitted a letter, and awarded a 15 day extension. This Sunshine District rule has since spread to the Southern region and probably elsewhere by now. The company rule still remains at 90 days. How is an older employee suppose to heal-faster than a younger employee? In most cases, the younger employee would heal faster or go back injured in fear of losing his/hers route. Intimidation works! This goes hand in hand with putting additional pressure on older couriers, making continued employment at Federal Express look that much more unlikely and hopeless.

Federal Express is now hiring more casual employees then in the past, whereas it was common practice to hire permanent part-time and eventually upgraded to full time within three months or sooner. It now takes years before a part time permanent employee is upgraded to full time. Why upgrade a part time employee when management can work a part timer 50/55 hours weekly when most full time employees are struggling to reach 35/40 hours. This practice is condoned by local management as well as upper management rather than paying a senior full time employee wages. I guess loyalty plays a small part in this rapidly changing company!!

Not only are we being intimidated, but our managers are being intimidated to intimidate us or else! Ms. Galloway has always demonstrated all the qualities of an autocratic leader, especially when it came to my manager at the time, Ardy Piazza. This writer was pitted by Mr. Piazza for not being able to recall going from stop 40 to 41 without making several stops in-between, making the mapping of this particular route unproductive. Mr. Piazza failed to follow instructions in

regards to pitting someone for this mapping check. First, it was imperative that he have a copy of this writers delivery record present to check that a delivery wasn't made in-between the mapped recorded stops. This is possible when the airbill is scanned, for whatever reason and not the astra sticker. This tracking system was in its infancy stages, being worked on by a co-worker, who advised me of the flaws. To add to this in-accurate and deceitful pitting was the fact that the day in question was twenty-eight (28) days earlier from the day I was pitted! I signed Mr. Piazza's pit form, knowing he was coerced into doing this by Ms. Galloway. I've worked for and with Ardy Piazza since I started with Federal Express, that being Nov. 19, 1984. In all the years, I know this cowardly act was uncharacteristic of Mr. Piazza. I was hurt and angered at the same time to think a thirteen year working relationship had deteriorated over the threats by one person, Ms. Galloway. Mr. Piazza was in fear of loosing his job! He mentioned this to me several times, possibly in atonement for his unusual behavior. However, the fact remains, my rights were violated, I was discriminated against by Mr. Piazza for the sake of following Ms. Galloways orders and Federal Express' tactics of forcing the older employee to downgrade or quit.

Another incident, involving operations manager Lou Fusco. This writer was approached by Lou Fusco on the sort belt, at which time he stated he would like to speak with me in regards to an accident. I followed Mr. Fusco to the front of my van as he adjusted his headset and making sure it was turned on. He stated to me that I would have to make out an accident report in regards to a puncture in the side wall of my spare tire. I stated that I had no knowledge of my spare tire having a puncture in it. I advised him that I would not make out an accident report and be charged for something someone else did. Mr. Fusco stated that it was Federal Express' policy

to make an accident report out of this. I asked Mr. Fusco if he checked my vehicle inspection report from the previous day, to which he answered "yes". Well the report indicated that everything was okay with my vehicle prior to my departure and that someone else must have driven my vehicle afterwards. I stated that my vehicle shows a full tank of gasoline and that the people who gas and/or washed my vehicle must be responsible. Mr. Fusco's answer to me was "But they are not Federal Express employees." I stated that they didn't have to be Federal Express employees to have an accident or to have damaged my spare tire. Mr Fusco was showing signs of losing his patience with this seesaw verbal confrontation and stated he was going to check further with Larry the mechanic in regards to the spare. Approximately ten minutes later Mr. Fusco returned and stated to this writer that the spare in question did not belong to this writers van and was in my van apparently by mistake. No apologies made, he walked off as if nothing had happened. This is an example of many incidents that took place in an attempt to weaken the morale of many older employees. These types of incidents occurred daily in an attempt to break down the targeted employees. This incident could have been avoided knowing the capabilities of Mr. Fusco and the Clearwater Management Team, in regards to investigating before accusing. Their real intention here was to intimidate and frustrate this writer into saying something derogatory in an attempt to charge me with insubordination. Also, this was another step that management took in trying to build a profile against senior employee as Federal Express's policy is "Three accidents within an eighteen month period is grounds for termination."

Ms. Galloway has on numerous occasions, harassed many older employees with the belt sort. For example, she told me to make sure after sorting the freight into their respected vans,

to go through three baskets of documents checking for mis-sorts. After sorting two of the baskets for routes 111 and 163, this writer returned to his van in an attempt to sort his basket. That's when Ms. Galloway would appear and state "Why are you still here? You have to leave the building!" Attempting to explain the reasons for the delayed building leave time, she would repeat herself and ask the same question, "Why are you still here?" These were unrealistic tasks that could not be completed in the time allotted and she knew this. Month after month of this treatment paid dividends for Federal Express, some employees sought counseling through "Peoples Help" while others chose other employment rather then being harassed further and others transferred out. Every day this writer was challenged mentally as to whether this would be his last day. What surprises would the tactful Ms. Galloway have in store for me today? What did I do wrong today? Will I ever be able to do anything right for Federal Express: Will she/they ever let up? How much more stress can I endure? These were the questions that went through most of the senior employees minds every day. It was a daily hostile environment full of mental and physical harassment.

There is one more point I would like to touch on before my conclusion of this affidavit. I was hired by Federal Express on November 19, 1984, at which time I was 39 years of age. Federal Express was a young, flourishing company on the way up and readily defended by it's employees, as a great company to work for. However, almost 14 year later, at age 52, Federal Express has been taking a long look at their aging work force for which they have mad no provisions.

Case in point, Federal Express has a program called Survey Feedback Action (SEA). This program is a survey given to Federal Express employees to ascertain what their feelings are in regards to local and upper management.

Certain percentages are attainable: favorable, fav/unf, unfavorable and no answers. These percentages are accumulated, screened and discussed by the employees and management. This is done to develop better working procedures, a better understanding of goals and to bring together both the employee and management to better understand each others concerns. Well, this SEA survey is given annually and the questions are the same, at least since my hiring in 1984, to the present day of 1997. The question I'm concerned with is Number 15, which states "CAN BE SURE OF A JOB IF I DO GOOD WORK". In 1994 the favorable line indicated 52 percent, in this years survey the percentage dropped to 33 percent, a drop of 19 percentage points, with approximately five senior employees not taking the survey. This indicates to myself and any co-workers that even if you are doing a good job, with present day management building a profile on you, you are not guaranteed a job. I know that I have performed a good job up till now, however, with the profiles being built on me and every other senior employee, question number 15 will be on a steady decline. Every employee 40 years of age or older with 10 or more years of service are being focused on by management of Federal Express Corporation.

In conclusion to my age discrimination affidavit, the mentioned incidents can and will be substantiated when necessary. Although these mentioned incidents are discriminatory in nature, the insensitivity to which Federal Express imposed their will, should not go unnoticed. Rather then managing their senior employees, Federal Express chose that policing them would be faster and easier in attaining their goal, downsizing their aging work force! This autocratic form of management had an adverse effect on morale of many of my co-workers, myself included. If you were an older employee and didn't agree with Federal Express philosophy

of People, Service, Profit, you were labeled a trouble maker and/or had a attitude problem! The purpose of this labeling was to isolate the more enlightened work-related employee from the newer, gullible employee.

It is this writers conclusion, of the facts stated above, Federal Express Corporate Headquarters in Memphis blueprinted a plan to all Region Heads instructing District and Local Management how they were to avoid unionization at all cost! It is also this writers conclusion, of the facts stated above, Federal Express Corporate Headquarters blueprinted a plan to all Region Heads instructing District and Local Management how they were to avoid the costly issue of an aging work force! It is this writers conclusion, of the facts stated above, that to achieve this plan, you aging and senior employees rights were violated by the continued victimization, harassment, and the misappropriation of authority by management! Addressing these issues are the only assurance that a reoccurrence of this doesn't repeat itself when the next generation of employees enters into the 40 plus age group or reach 10 or more years of service.

AFFIDAVIT (cont)

This section left intentionally blank

I have read and had an opportunity to correct this Affidavit consisting of ____ handwritten □ typed □ pages and swear that these facts are true and correct to the best of my knowledge and belief.

_____

Before me, the undersigned authority, personally appeared _____, who being duly sworn, says under oath that the matters and facts set out in the above document, consisting of _____ pages, true and correct to the best of his/her belief.

Sworn to before me, this ____day of _____, 1997, by _____, who has produced _____as identification.

My Commission expires: _____

(Notary Public)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY	CHARGE NUMBER
⊠EEOC	151980767

* * *

NAME (Indictate Mr., Ms., or Mrs.)
Mr. Vincent J. Maccia

HOME TELEPHONE NO. (Include Area Code)
(813) 934-2914

STREET ADDRESS	CITY, STATE AND ZIP CODE
216 Earl Street	Tarpon Springs, FL 34689

DATE OF BIRTH
[REDACTED]/45

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (*If more than one list below.)*

NAME	TELEPHONE NUMBER
Federal Express Corporation	(813) 736-6727

STREET ADDRESS	CITY, STATE AND ZIP CODE
1881 Main Street	Dunedin, FL 34698

COUNTY
103

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*

☒ RETALIATION

DATE DISCRIMINATION TOOK PLACE

EARLIEST	*LATEST*
02/04/98	02/05/98

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s))*:

I. PERSONAL HARM:
On February 4, 1998, I was called on the "Dads" unit, and told I had a meeting with Mike Goodling at 1600 hrs", per my supervisor. I was not given any relief to assist with my deliveries. I was told I could not meet later, and I could not have any late deliveries. While in the meeting with Mike Goodling, I was questioned about my reasons for filing an "external EEO complaint". I did not answer any questions on the advise of my attorney.

II. RESPONDENT'S REASON(S) FOR ADVERSE ACTION(S):
I was not given any reason for the meeting with Mike Goodling. I was not given any reason for not being given a relief to assist with my deliveries. I was not given any reason for the harassment.

III. DISCRIMINATION STATEMENT:
I believe I have been retaliated against for filing a previous age discrimination charge (EEOC #15B970133), in violation of the Age Discrimination in Employment Act of 1967.

NOTARY - When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT
/s/Vincent J. Maccia

SUBSCRIBED AND SWORN BEFORE ME THIS DATE
(Day, month, and year)
3rd April 98 [NOTARY STAMP]

RE: Addendum to Vincent J. Maccia's EEOC Complaint, Charge # 15B970133

For the record, I would like to state my desire for the following information to be considered as part of my original affidavit:

Once again Federal Express supports my original findings, that is, everything is being orchestrated from Memphis! Mr. Goodling's unscheduled meeting, and not identifying his position within Federal Express, was done intentionally as to make me believe he was still the personnel representative and the person I should confide all my ill feelings to. At the bottom of my letter from Mike Goodling he acknowledges the fact that copies were forwarded to Greg Richards, Labor Attorney for Federal Express, Memphis Tenn., and CoAnn Sims-Ressler, Employee Relations, Head of the Internal EEOC for Federal Express, Memphis, Tenn. This meeting was well planned, although meant to appear subtle in substance. The following event took place prior to our meeting:

On February 4, 1998, received a message via my Dads unit message 10, which was sent at 1351 hrs, while I was on my lunch break. Message was as follows: F.Y.I: "U also have a meeting with Mike Goodling at 1600 thks per Ed". ***Meaning someone else was also scheduled for this meeting.*** My half-hour lunch break was from 1348 hrs to 1418 hrs. It was not until 1418 hrs did I finally receive the above mentioned, message 10. A check of my remaining deliveries revealed approximately 15 to 20 stops. At 1442 hrs, while making a delivery at Tarpon Springs High School, I called my Operations Manager Ed Prough. The conversation went as follows: I advised Mr Prough of approximately 15 deliveries left with 3 of them SOS deliveries, which carries a 1500

commitment time. He stated that a check with dispatch revealed I only had 4 or 5 stops left. If he had checked with dispatch, as he stated, my deliveries would have been subtracted from my total stops via my supertracker. There wasn't an asterisk next to my time on my supertracker which indicates that it was purged, and my stop count was subtracted from my original count. He also stated," didn't dispatch state in that message they were going to send you help?" I stated no. Spoke to dispatch (George), who stated Mr. Prough didn't tell them to send help, that he was waiting for a call from this writer in regards to needing help, more lies and more harassment. I asked Ed if he wanted to eat the lates, to which he stated, no! Get the SOS's off and he would send Brent Patera up to take and delivery the remaining freight. Trying to avoid lates, having to meet up with Brent Patera, and trying to make this 1600 meeting, I ***suggested,*** "why can't you ask Mr. Goodling if it was okay to meet with him around 1630 hrs, I think I would be able to get the rest of the freight off. Ed Prough's reply to me was "because you don't dictate policy around here"! "You be here at 1600 hrs! He said this knowing he didn't and wouldn't contact Brent Patera, knowing I would be under even more pressure because the help would never arrive!

I continued to deliver in a frantic pace and was able to get my SOS pieces off on time, knowing he would check for late pieces and pit me for theses possible rates. I continued heading southeast and delivering while trying to raise Brent Patera on my radio. Now its 1515 hrs with no answer from Brent I tried to contact dispatch without any luck. In my attempts to make contact another pickup courier overheard my radio transmissions and stated she thought she saw Brent at the station and was leaving for the day. I asked her what her location was and to stand by there. Upon meeting with Rt 177, (pickup courier Roseann Gudz) in my haste I stated to

her I didn't have time to explain but I needed to get rid of my remaining freight per management. Now she was upset and stated that she didn't have time to deliver my freight either to which I stated I was sorry but had to leave to make a 1600 hr deadline surprise meeting. Learned later she had to make contact with Route 111, Anthony Best to deliver my packages or she would have possible lates.

Now its 1531 hrs heavy traffic on US 19 with 10 miles to the station. Upset with this unnecessary pressure and unscheduled meeting, I arrived at the CLW Station at 1552 hours. Hurried to park and post trip my vehicle and make this meeting on time, in fear of being charged with insubordination. Upon entering the managers' offices, I observed Jerry Freeman in light conversation and laughing with whom I believed to be Mike Goodling. I was aware Mike Goodling was the personnel representative several years ago and that Kim Taylor was now the personnel representative. With several minutes to spare I followed Jerry Freeman out into the warehouse and questioned him as to him having a meeting with Mike Goodling, knowing he also had an age discrimination charge against Federal Express. Mr. Freeman stated he had no knowledge of any meeting at this time. I observed my senior manager, Mike Reich staring at Jerry and I while in conversation. I returned to the couriers break room before returning to the managers office area, where I observed Mike Reich leaning on Ed Proughs office wall before introducing us, that being Vinny Maccia, Mike Goodling, turned and continue his conversation with Ed Prough. I at that time followed Mr. Goodling into Ardy Piazza's office. Upon Mr Goodling closing the door, he made the mistake of asking me "So how was your day?" I stated "I'm glad you asked, and proceeded to explain the above mentioned events that took place starting at 1418 hours. Mr.

Goodling expressed no concern and proceeded with his agenda.

A short nine-minute dialogue followed with two questions asked by Mr. Goodling. What did I mean by disparate treatment and who threatened me with termination. These questions I stated I would not answer at this time without my attorney. (See attached)

A copy of Mr Goodling's letter dated Feb. 5, 1998 and my response letter dated Feb. 10, 1998, is attached to this document as to what transpired at this meeting.

The following day, on Feb. 5, at approximately 0745 hrs as I was conducting my job on the belt sort, I questioned Ardy Piazza, operations manager, in regards to what position Mike Goodling held with Federal Express. Mr. Piazza hesitated, then stated that he thought he was the personnel representative. I stated that I thought Kim Taylor was our personnel representative. Mr. Piazza replied, he thinks Kim Taylor was experiencing health problems and that Mike Goodling was being sort of grandfather back into his old job but wasn't really sure.

At approximately 0800 hrs, Feb. 5, 1998, I spoke with Ed Prough and questioned him in regards to what policies I was dictating to him the previous day? His reply was "Well, it's actually not a policy but you needed to be here at 1600 hrs. I also asked him why he never sent Brent Patera or contacted dispatch in regards to getting me help to which he stated "You did fine" smiled and walked away. A further check of Brent Patera's whereabouts revealed he had clocked out at the same time I was speaking with Ed Prough from Tarpon Springs High School, 1442 hours. This was Ed Prough's way

of slapping me in the face for the last time, knowing he was transferring to the Lakeland area on February 13, 1998

On Feb. 5, 1998, late afternoon I called and spoke with a Barbara Stiedemann, Enforcement Supervisor, Unit 2, who I related the above mentioned incidents. Barbara stated that Federal Express only had copies of the charges but they could petition for a copy of my affidavit. I then advised her I would type an addendum to my original affidavit and forward it for her files.

I can only state the facts. The emotional duress which Ed Prough, Mike Reich and Mike Goodling put me under was intentional and this unannounced meeting was scheduled as such to catch me off guard in answering questions that would cause myself great harm and complications in my age discrimination charge against Federal Express. Once again, its proof that this is an an ongoing age discrimination plan by Federal Express's upper management to harass, intimidate and position an older employee to contemplate quitting rather then continue to absorbing this punishment. I can only hope, the EEOC can see this as a retaliatory charge and file it as such, so as to put a stop to this sort of harmful treatment.

I declare under penalty of perjury that the Foregoing is true and correct

Date:_____

_____

Charging Party (Signature)

I swear or affirm that I have read the above addendum and that it is true to the best of my knowledge, information and belief.

Signature of Complainant: _____

Notary: _____

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS DATE (Day, Month, and Year) _____

Mr. Vincent Maccia
216 Earl Street
Tarpon Springs, FL 34689

Dear Vincent:

This will confirm our meeting on February 4, 1998, at the CLW FedEx facility located at 1881 Main Street in Dunedin, FL to discuss your allegations of discrimination which you filed against FedEx. During our brief meeting you were asked to provide assistance so your allegations could be investigated. You stated you were advised by your attorney not to answer specific type questions. You were asked questions about your allegations and you declined to answer stating this information was provided on the affidavit you submitted through the EEOC. When asked if you were refusing to cooperate in this investigation and you responded you would not answer certain questions.

This is to advise you the company has an obligation to investigate these allegations and will conduct this investigation with the available information. However, our ability to reach a resolution of your concerns may be hampered by your unwillingness to participate. We hope you will reconsider your declining to participate.

Should you want to help resolve your allegations we are open to your participation.

Regards,

/s/
Mike Goodling
Sr. Personnel Representative
Sunshine District

(800)321-6528

MG/lc

cc: Greg Richards
CoAnn Sims-Ressler

Vincent J. Maccia
216 Earl Street
Tarpon Springs, FL 34689

February 12, 1998

Mr. Michael Goodling
Sr. Personnel Representative - Sunshine District
Federal Express Corporation

RE: INTENT

Dear Mr. Goodling:

This is in response to your undated letter regarding your unannounced, unscheduled meeting on February 4, 1998 at the CLW FedEx facility. I would like to clarify some false and misleading allegations you made in your letter.

If you took the time to review my personnel records before attending this meeting you would have known that my background was in law enforcement. This training has taught me to scrutinize people and events and draw some conclusions about their true intentions. If FedEx had serious intentions about discussing what led me to seek ***federal, state and retaliation*** protection under my external EEOC affidavit the following would have occurred:

1. Federal Express Corporation would have sent someone with the qualifications, ability and authority to resolve a situation of this magnitude.

2. Federal Express Corporation would not have sent an unprofessional person that would pursue a badgering form of questioning and certainly, this representative would

have presented himself properly by immediately identifying their position with FedEx and showing the proper picture ID or appropriate business card.

3. I would think someone in a Sr. Personnel Representative position could have recognized that operation manager Ed Prough, deliberately mishandled the necessary arrangements for me to attend this meeting at the requested time, intentionally causing undue pressure and chaos. This was explained to you prior to the start of your questioning but you expressed no concern and proceeded ***with your agenda***. By you not considering my complaint seriously, this led me to believe that you either ***condoned*** his actions or ***initiated*** them.

4. Finally, Federal Express Corporation should have sent someone who could have maintained a professional demeanor instead of squirming in their chair and making me even more suspicious of the company's true intentions.

Mr. Goodling, in your letter you stated our ability to reach a resolution may be hampered by my unwillingness to participate. Did you forget that I offered to meet with you and my attorney at your convenience to discuss this matter, to which you responded "that cannot happen." Should I have taken your answer to mean Federal Express really doesn't want to resolve our problem?

In the last line of the first paragraph "When asked if you were refusing to cooperated in this investigation" please be advised that your correct question was as follows "So your not willing to help in this investigation". There is a difference between "refusal" and "not willing to help", especially when I left the

door open for a future meeting, with my attorney, of course, being present.

I understand that the company has an obligation to investigate my allegations. However, I would think that information is available to you by petition to the EEOC. I, too, have an obligation to protect my legal rights under federal and state laws.

Due to the many discrepancies in your letter and after only a brief meeting, even you can see it is pertinent that I have legal counsel at any meeting where my rights may be violated under the Privacy Act or under the Notice of Non-Retaliation Requirements.

I can only conclude that the many inconsistencies in your letter as well as the events of February 4th constitutes sloppy communication on the part of Federal Express, which is a good way to mask true intent and keep agendas hidden.

Respectfully,

Vincent J. Maccia #42775

CC: Greg Richards
CoAnn Sims-Ressier

July 12, 1998

Mrs. Barbara Steideman

EEOC-Tampa Office
Pimberlake Fed. Bldg. Annex
501 E. Polk St #1020
Tampa, FL 33602-3945

RE: Charge of Harassment

Dear Mrs. Steideman

Please find enclosed my letter charging Federal Express Corporation, with harassment in addition to my original charge of age discrimination in case number 15B970133. Also included with my letter is some documentation to substantiate my findings.

If you have any questions of concern, please call me at 813 934 2914.

Sincerely,

Vincent J. Maccia
Fed Ex courier #42775
216 Earl St.
Tarpon Springs, FL 34689

RE: Addendum to Vincent J. Maccia's EEOC Complaint, Charge #15B970133

For the record, I would like to state my desire for the following information to be considered as part of my original affidavit:

Once again Federal Express supports my original findings, that is, everything is being put on the older couriers shoulders as far as being held accountable.

On July 1,1998 at approximately 7:25am, my operations manager, Ardy Piazza, approached me at my work station at the belt sort. He questioned me in regards to delivering a ***late*** package on June 29, 1998, at 10:40am. I told him I had no knowledge of delivering a late package that date. At that time, he showed this writer a print out of the package in question. The printout showed it was (pup) picked up on June 26th at 1526hrs and the (pod) proof of delivery was June 29th at 10:40 am to the Hughes residence. Being the service was a ***Priority*** package it was to be delivered before 10:30 or its considered ***late***.

My statement to Mr. Piazza was "this was the second time in the last week or two that you showed me a print out of a late package delivery." "I don't remember the package in question." He stated "You would have remembered it if it was late, wouldn't you?" I answered his question truthfully "I don't know"! He then stated "Why don't you go back to the recipient and see if you could retrieve the package with the astra label on it proving its service commitment. I answered him with astonishment "Go back to the recipients house to check a package delivered two days ago? He stated "yeah, why not?"

In speaking with Tom Finnegan, a senior co-worker next to me, stated that this same thing happen to him last week and Ardy told him also to go back to the recipient an try to retrieve the package. Let it be noted that this type of procedure would never have been asked of you in the past. Ever since this Best Practice Pays Program came into effect, the burden of proof has been put on the couriers and enforced on the targeted ones.

I made a decision this date to retrieve the package, on the suggestion of my manager even though I questioned him in regards to policy and procedure, not knowing what code to go into or the answers to be given in case the recipient was not tolerant to my request. The more I thought about it, retrieving this package was important in protecting myself from someone trying to build a profile of a bad employee, that being, local management, district or upper management in Memphis.

At approximately11:11hrs, on July 1st, while in my delivery mix cycle (code 20) stopped at the Hughes residence 1395 Red Oak Dr. to retrieve the package in question. Explained to Mrs Hughes that it was necessary to retrieve a package per my supervisor, to secure the astra sticker for evidence in a ***late*** package investigation. Looking astonished, she stated she would look for it. Several minutes had passed when she returned with it and handed it to me with the recipient's copy of the airbill still in the plastic pooch. She asked this writer with stone puzzlement written on her face, what's the problem? I stated, that I was being charged with a late delivery according to Federal Expresses ***electronic printout,*** and that the package was supposed to have been delivered before 10:30. She shook her head as her husband came to the door asking, "what's going on?" I left with Mrs. Hughes trying to explain to her husband what took place. The

overnight letter was a standard overnight letter, which has a 3:00pm commitment time, it was checked off on the recipient's copy as well and also printed on the Astra Label, Standard overnight.

At approximately 16:15 hrs, returned to the CLW station and entered Mr. Piazza's office. Asked Mr. Piazza if the late package in question would go against me, become a part of my personnel file or be held accountable when it comes time for my performance review. He stated "Oh no, no, I wouldn't do that." "I'm just trying to get to the root of the problem." I stated maybe you wouldn't hold me accountable, however my previous manager Ed Prough, did! He held me accountable for this same type of thing, late packages to which it cost me money out of my pocket when it came to my performance review. You know that we've had unexplainable electronical malfunctions with the supertrackers, dads units, smart base, etc, yet were held accountable as though its always human error. Mr. Piazza stated that "Yes, it's not always human error, sometimes ***it's electronical,*** however we have to get to the root of the problem."

Let me just state for the record, that many Federal Express employees have been fired for Electronical Falsification especially the targeted ones! How can this be when Federal Express knows about the electronical problems and still cannot correct them. Had I not followed up on my particular case in question Iwould have been held accountable and who knows maybe terminated!

I presented the standard overnight letter to Mr. Piazza, airbill number 3248229622, to which he stated "It was an (sos) standard overnight," seemingly shocked he stated "This is the second package that was retrieved being that Linda Sadivy was the first, another senior courier. He stated that

Linda went back to her customer and retrieved her package, an again it proved to be unexplainable. This writer checked with Linda who stated they never got back with her as to the cause. I thought management wanted to get back to the root of the problem? ***(Electronical Error, not human error)*** He asked to make a copy of the sos in question, to which I stated he could but I needed the original copies for my records. I stated to Mr Piazza, theirs two things here I want to make clear. First, this is **electronical malfunctioning** and secondly **harassment**. I stated that this was not policy for a courier to have to go back to a customer to clear himself and I asked him what's the code I was suppose to be in to conduct my own investigation. He did not answer me. Here again Federal Express shifts the burden of proof on the courier to clear him or herself.

It is this writers and many, many Fed Ex employees opinions that this is the way upper management and local management will build a profile of employees, and fire the targeted ones, whether right or wrong. I believe, my particular case here is a case of someone changing the service of my package on purpose! I believe this was done by upper management without the knowledge of my operations manager, Mr. Piazza whom I have the utmost respect. These types of mishaps just don't happen, some are created. I'm concerned because of being a targeted employee. As of this date, July 12th, Mr Piazza nor any of the CLW management has come forth with an explanation.

This entire conversation was overheard by Ronald Clausnitzer, who was located outside Mr. Piazza's office, and will verify same if need be. (Office door was open)

On July 3rd, returning from working my route approximately 1600 hrs, stopped at my mail slot to check for

new mail. To my amazement, there's a pit form on the questioned late package in my mail slot. Its dated June 30th to which I have 2 days to respond as to why a had a late package! In my frustration, I hastily went to Mr. Piazza's office to find out why this was in my mail slot. Mr. Piazza had left for the weekend.

I am filing this letter for retaliatory charges of harassment and the way management handled this late package charge once they found out it wasn't my fault, but there faulty equipment. This all seems light in nature until it happens to you. These are some of the tactics used by Federal Express to discourage their older employees into choosing quitting, rather than putting up with this relentless harassment.

I declare under penalty, of perjury that the Foregoing is true and correct

Vincent J. Maccia

_____

Fed Ex employee # 42775

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 99-2466-CIV-T-25B

GERALD D. FREEMAN, VINCENT J. MACCIA, RONALD CLAUSNITZER, WAYNE C. TATE, KATHY CREAMER and WILLIAM G. KROLMAN, all Plaintiff *Pro Se,* et al.	)
v.	)
FEDERAL EXPRESS CORPORATION, MARY ALICE TAYLOR, MARCO CHAN, SCOTT BUNKER, SUSAN MARTIN, TERI GALLOWAY, ARDY PIAZZA, LOU FUSCO, SUSAN MATLOCK, et al. Defendants	)

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT OR, ALTERNATIVELY, TO STRIKE THE COMPLAINT *IN TOTO*

Defendants, Federal Express Corporation, Mary Alice Taylor, Marco Chan, Scott Bunker, Susan Martin, Teri Galloway, Ardy Piazza, Lou Fusco, and Susan Matlock, move pursuant to Fed. R. Civ. P. 12(b) to dismiss this action against the individual defendants on the grounds that the complaint fails to state a claim upon which relief can be granted. Defendants move pursuant to Fed. R. Civ. P. 12(f) and 41(b) to dismiss Plaintiffs' complaint or, alternatively, to strike the complaint *in toto* on the grounds that it fails to

comply with the requirements of Fed. R. Civ. P. 8 and contains redundant, immaterial, impertinent, and scandalous matter. In addition, Defendants move to dismiss or strike the allegations of a class action on the grounds that Plaintiffs are not proper class representatives. A memorandum setting forth the facts and law upon which

* * *

UNITED STATES DISTRICT COURT
Southern District of New York

02-CV-3355 (LMM)

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Trompics, individually and on behalf of all others similarly situated,	)
Plaintiffs,	)
v.	)
Federal Express Corporation,	)
Defendant.	)

DECLARATION OF GEORGE ROBERTSON

I, George Robertson, am a witness of lawful age and have personal knowledge of the following facts.

1. I worked for Federal Express Corporation as a courier for approximately sixteen years, until I was terminated on September 8, 2000. I filed a charge of age and disability discrimination against Federal Express Corporation on December 1, 2000. I provided my current address on the charge, 36389 N. Bernice Dave, Lake Villa, Illinois, 60046.

2. My family moved from Lake Villa in March of 2001. For about a month, we stayed with my parents at 2521 Country Hill Court, Lake Carol, Illinois 61046. I submitted a forwarding order to the post office.

3. On April 12, 2001, we moved to our current address: 1450 Livingston Drive, Rockford, Illinois 61107. Again, I submitted a forwarding order to the post office.

4. I did not hear anything from EEOC for a very long time after I filed my charge. In January of February 2002, a legal assistant with Rose & Rose asked me the current status of my charge. Because I had not received any recent information, I wrote to EEOC and asked for the current status of my charge.

5. In response, EEOC sent me a letter dated February 7, 2002 with a notice of right-to-sue dated April 25, 2001 attached. I received these documents shortly after February 7, 2002. I had never seen the right-to-sue notice before. The notice reflects my parents' address in Lake Carol. By the time the notice was sent, I had moved from Lake Carol. Although I left a forwarding order, a copy was neither received there nor received by me in Rockford.

I declare, under penalty of perjury, that the foregoing is true and correct.

_____

George Robertson

August 5, 2002

KENNEDY INTAKE QUESTIONNAIRE

[Fold-out Exhibit, next 2 pages]

BEST AVAILABLE COPY

INTAKE QUES' 'ONNAIRE

hi: form is affected by the Privacy Act ι .974; see Privacy Act Statement on everse before completing this form.

EE USE ONLY
Nam.. (Intake Officer)

lease answer the following questions, telling us briefly why you have been discriminated against in employment. un cer of the EEOC will talk with you after you complete this form.

OB: [redacted]-59 (Please print) SSN: [redacted]

AME: PATRICIA ANN KENNEDY Date: 12-3-01
(First) (Middle Name or Initial) (Last)

DDRESS: 7042 MAIDSTONE CT Phone No. (include area code): 727-376-7042

ITY: NEW PORT RICHEY STATE FL ZIP CODE 34653

ease provide the name of an individual at a different address who is in the local area and who would know how to reach you.

AME: IRENE LEHR RELATIONSHIP: MOTHER TELEPHONE: 727-372-8039

DDRESS: 8039 OLD CR 54 CITY NEW PORT RICHEY STATE FL ZIP CODE 34653

hy do you believe this action was taken against you? (e.g., Race, Color, Religion, Sex, Age, Disability, or National Origin.)

AGE DISCRIMINATION

hat action was taken against you that you believe to be discrimination? What harm, if any, was caused to you or others in your rk situation as a result of that action? (e.g., Discharge, Discipline, or Harassment) (If more space is required, use reverse.)

Over the past several years Management has treated me and Others) differently on virtually every facit of my job, including but not limited to staffing time.; (OVER)

elieve I was discriminated against by: (Check those that apply)

☒ EMPLOYER ☐ UNION (Give Local No.) ☐ EMPLOYMENT AGENCY ☐ OTHER (Specify)

AME: FEDERAL EXPRESS CORP.	NAME:
DDRESS: 1881 MAIN ST DUNEDIN FL 34698	ADDRESS:
ONE: 727-736-6727	PHONE:
proximate number ployed by this employer: 100	What was the most recent date the harm you alleged took place? 12-3-01 AND CONTINUING

you now employed by the employer that you believe discriminated against you? YES

E: OM: 8-17-87 (Date)	NO: APPLIED FOR (Position)	OR: WAS EMPLOYED AS (Position)
RRENT POSITION: COURIER	ON (Date)	UNTIL (DATE) I WAS (Laid off, Fired, etc.)

mally, your identity will be disclosed to the organization which allegedly discriminated against you. you ☒ Consent or ☐ not consent to such disclosure?

e you sought assistance about the action you think was discriminatory from any Government agency, from your n, an attorney, or from any other source? ☒ NO ☐ YES (If answer is yes, complete below.)

ME OF SOURCE OF ASSISTANCE: DATE:

ULTS, IF ANY: N/A

e you filed an EEOC charge in the past? ☒ NO ☐ YES (If answer is yes, complete below.)

OX. DATE FILED:	ORGANIZATION CHARGED:	CHARGE NUMBER (If known):

NATURE Patricia A. Kennedy DATE 12-3-01

Form 283 Patricia A. Kennedy 2-3-02

courier performance reviews; late packages and data scans; on-the-job injuries; and other employee benefits. Several older couriers have lost their jobs and myself and others have lost several thousands of dollars and we have endured a hostile work environment as a result of their discriminatory application of their Best Practice Pays Program.

PRIVACY ACT STATEMENT

(This form is covered by the Privacy Act of 1974; Public Law 93-579. Authority for requesting the personal data and the uses thereof are given below.)

1. *FORM NUMBER/TITLE/DATE. EEOC FORM 283, Intake Questionnaire, August 1987.*

2. *AUTHORITY. 42 U.S.C. § 2000e-5b, 29 U.S.C. § 211, 29 U.S.C. § 626.*

3. *PRINCIPAL PURPOSE. The purpose of this questionnaire is to solicit information to enable the Commission to avoid the intake of matters not within its jurisdiction.*

4. *ROUTINE USES. Information provided on this form will be used by Commission employees to determine the existence of facts relevant to a decision as to whether the Commission has jurisdiction over potential charges, complaints or allegations of employment discrimination and to provide such pre-charge filing counseling as is appropriate. Information provided on this form may be disclosed to other State, local and federal agencies as may be appropriate or necessary to carrying out the Commission's functions. This would include employment practices laws. Information may also be disclosed to charging parties in consideration of or in connection with litigation.*

5. *WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION. The providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge of discrimination. It is not mandatory that this form be used to provide the requested information.*

STATE OF FLORIDA CASE NAME _____

CITY/COUNTY OF Dunedin/Pinellas CASE NO. ___

AFFIDAVIT

I, Patricia A. Kennedy, being first duly sworn upon my oath affirm and hereby say:

I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 42 years of age, my gender is female and my racial identity is Caucasian.
My date of birth is [REDACTED]/59. My Social Security number is [REDACTED].
I reside at 7042 Maidstone Court.
City of New Port Richey. County of Pasco.
State of Florida. Zip Code 34653.
My telephone number is (including area code) 727-376-7042.

My complaint is against Federal Express Corporation which is located at 1881 Main Street in Dunedin Florida 34698.
Its telephone number is (including area code) 727-736-6727.
My job classification is (if applicable) Courier. My wage is $17.39.
My Immediate supervisor is (if applicable) Chris Savas Operations Manager.

Patricia A. Kennedy's EEOC Affidavit

Since I was hired by FedEx in 1987, I have given 100% to my job which I am proud of. During the first eight years of my career at FedEx, my performance reviews and bonus pay-outs continually reaffirmed my dedication to my customers and my employer. However, over the last several years I feel that FedEx through the "Best Practice Pays" Program has systematically targeted myself and others thereby making it more difficult for me to confirm that work ethic via their contorted measuring stick, *minimum acceptable performance standards* or *MAPS*. I feel that FedEx management and their "industrial engineers" have and still are discriminating against me because of my age. I believe my employer's actions violate my civil rights.

Application of B.P.P. Absenteeism Policy Violates ADEA and ADA:

Even before I turned 40 I felt I was being treated differently because of my age - ability to heal faster and my pre-1988 hiring date. In October of 1995, Federal Express via BPP instituted a 30 day/90 day Route or Job Retention policy for medical absenteeism which had in place "certain criteria" upon which a panel of non-medical ex-operation management people could determine who loses their route for injuries (around 30 days of more) and who loses their station full time slot for injuries (around 90 days or more). In January, 1996, Best Practice Pays declared the need for a new absenteeism policy which could for the first time negatively impact on-the-job injuries and which could lead to discipline up to and including termination. And this policy obviously impacted older, slower to heal workers *plus*, it was absolutely applied in a discriminatory manner. This in 1997 I *became* displaced from the CLW station due to an on-the-job injury, a younger,

post-1988 employee was promoted to full time and took my route and full time slot. But from this displacement I was lucky to find a full time slot open in East Tampa at the MCF station (a much longer commute) and I also learned their older employees were being subjected to the same hostile work environment games as my fellow co-workers at the Dunedin CLW station. It should be noted that my new MCF co-workers were bolder and filed many more EEOC age discrimination affidavits; their inability to grasp how and why they were being treated differently lead most of them to frustration and fear of reprisal. I know of several older couriers who were fired and/or constructively terminated as a result of these BPP policy and procedure changes. I don't know of a single younger employee who lost their job because of such policies. Such policies and procedures and management's ability to determine *"fault"* for accidents occurring in the work place further heightens my frustrations and fears. I don't want to give in to their desire to have me walk away from this job but I often question the pros and cons of whether or not it would be better to walk away versus being fired by a "good" company to work for.

Application of BPP Employee Reviewing Standards and Methods Violates ADEA:

Every year my employer's Survey Feedback Action or SFA promises so long as I do a good job, I'll always have a job! Notwithstanding what FedEx has done with its treatment of on-the-job injuries (many of which are repetitive motion injuries which you get by doing a good job), my company has through its BPP program completely polluted the methods of calculating and defining what is a "good job" to the point that older employees like myself no longer know if we even will have a job tomorrow. In other words, what was once

considered a good enough performance to get a bonus is now borderline for *job retention*.

And these ever-changing BPP *minimum acceptable performance standards (MAPS)* ARE NOT being applied to the younger couriers or there would be many more terminations and/or employees walking away from their jobs amoung this group of younger employees. And this is just one area where the hostile work environment works upon us older employees - where operation managers and industrial engineers keep turning up our numbers trying to pressure us to leave or be terminated while the younger couriers are not being held to the same standards. And as a result of such discrimination, younger couriers stand ready to reap the benefits of another full time slot becoming open.

When BPP was originally introduced in November, 1994 you and your manager were supposed to go out on the road and then sit down and arrive at mutually agreeable productivity goals. And for the first few years, management would attempt to make it appear that they were following this course. However, from time to time management would single out older couriers and try to get them to sign off on unrealistic goals via high pressure and deceit. In the mean time, Memphis has discovered many ways to raise your numbers without our approval by changing the way our productivity is calculated (i.e. adding the time in your delivery cycle for going to and from your route so that any time spent driving in excess of the time allotted would further dilute your productivity efficiency). And although these subversions may appear to be applied to all couriers equally (don't know how generous management is being in calculating their driving time), the fear of accountability remains highest among us older couriers. Also, when management check rides an older courier, they make sure that they increase your stops

per hour goal so that you are lucky to be at a 4 for your review. To make matters worse, my manager is now raising my numbers *at will* because he says Memphis believes our goals should be established by each persons' highest daily productivity for any three days during the previous six weeks. Thus, everyone will be always **UNDER** Memphis' *minimum acceptable performance standards* (MAPS 4 rating) except for those three days for every six week period. Which means we are subject to be terminated on any given day even though in all reality I'm working the best I always have and should be obtaining the highest score, a 7 and bonus. Such an atmosphere invites discriminatory discipline and further increases our hostile work environment.

On or about July 9, 1996 my perception of where and how management had pigeonholed myself and other older couriers within their BPP age discrimination plan became very clear. Our start times were pushed up another 10 minutes per day, but management also found another means to try and portray each one of us as malcontents, slough-offs (i.e. by only permitting us to be in a code 53 and forbidding us the use of the "general package handling, code 30" – while still continuing to hold us accountable for leaving the building after a maximum of 9 minutes of fine sort, code 53 – management knew such 9 minutes would expire every day before the sort was even done, therefore, we would be in code 53 at least twice as long as other couriers and on paper it would appear as though we were dragging our feet by not leaving the building promptly). Then about 5 ½ years later, I received a copy of a letter dated January 30, 2001 which is addressed to the older couriers under operations manager Lou Fusco regarding Code 53 and that after our stretch/flex and pre-trip to please go into a Code 53 (See Exhibit "1"). Management's attempt to revive this earlier discriminatory practice which places older couriers in a bad light and has

further financial impacts upon each of us was still another driving force in filing this complaint. The laws against age discrimination are there to prevent employers from purposely placing older employees in a false light in order to pressure them into quitting and/or being terminated under false or misleading circumstances.

Since the Spring of 1995, management has continually picked at me and other older couriers emotionally and financially by changing our "start times". I feel the initial changes in start times were the direct result of Memphis' discriminatory training program contained in "High-Velocity Culture Change, A Handbook For Managers". As a result of such implementations, younger couriers with less seniority than me have been getting earlier start times so that they are able to take out just as many stops as I do and get more hours than I do. It's not fair! Younger couriers are starting earlier, getting their trucks and packages organized and ready to get on the road when I am just getting to my truck - seeing my packages thrown inside and outside the truck, and then getting pressured by management to leave the building earlier. Management knows it is holding me and others to a higher standard. When I have a day off, management schedules these people to earlier start times, they leave the station better organized with only 80% of my normal route and when I return to work, management throws it in my face that my replacement gets back to the station more quickly than I do. That's one more thing that makes me feel like quitting and finding another job - I know that's how they are trying to force me out. It's hard to continue to do a good job in the hostile work environment that management has created.

Before Best Practice Pays/High-Velocity Culture Change, older couriers always had the earliest start times - it was the easiest money we make in any given day, less time pressure

and better chance to organize your packages to ensure a smoother day. The early start time was one of three reasons us older couriers would bid (by seniority) on a new or open route (better chance for overtime; better organized routing for less mistakes; and better productivity for bigger bonuses). And together these three reasons translate into a larger monthly retirement check down the road. In March of 2000 I signed an offer letter for a route that has always started at 0650 A. M. The offer letter that I was given and signed had a start time of 0700AM, which 10 minute difference really irked me, however, a couple weeks later after repeatedly asking management what day I was to start this route, I was then told my start time would be 0730AM - which was not the specific time stated in offer letter that I signed. When I asked management why I was not asked or assigned to start earlier, I was then told that such extra AM hours were being assigned only to PMers that signed up for extra hours. I then saw PMers that signed up for extra hours working 12 hour days. Management always has a couple different flimsy excuses for discriminating against me, but such obvious discrimination is very upsetting and is meant to drive us away.

My employer has a number of other ways to harass older couriers with alleged errors and missing scan data (they admit to faulty equipment/software - but still want to hold us accountable). Along those lines, recently management has been harassing me about "late" package deliveries. I feel that FedEx has manufactured RDL (right day lates) to show a bad performance on my review. I know I didn't have them and they know other younger couriers have late deliveries almost daily and nothing is said. Management's purpose is clear; they want us to see the disparaging treatment and become so disgusted we quit.

For years I have threatened to quit, threatened to stand up for my rights, but was too afraid to do anything. In the past several months, I have come to realize that by doing nothing I have allowed them to build a stronger case against me with their phony *minimum acceptable performance standards*, their faulty electronic data capturing systems and the other discriminatory BPP policies and procedures. I know I am not alone and many older couriers share my doubts and fears regarding being terminated or forced to retire via management's twisted facts and numbers. We have done a good job. Federal Express does not want us pre-1988 senior employees to continue our employment lest they will have to pay for our retirement health benefits if we can complete 10 continuous years of service between ages 45 and 55. Please force Federal Express to end their age discrimination plan so we can finish out our careers absent the unfairness and hostile work environment created within their application of *Best Practice/High-Velocity Culture Change.*

I have read and had an opportunity to correct this Affidavit and Exhibit "1" that together consist of 5 typed pages and swear that these facts are true to the best of my knowledge and belief.

/s/ Patricia A. Kennedy

Before me, the undersigned authority personally appeared Patricia A. Kennedy, who being duly sworn says under oath that the matters and facts set out in the above document, consisting of 6 pages, true and correct to the best of her belief.

Sworn to before me, this 3rd day of December, 2001 by Patricia A. Kennedy who has produced FLORIDA DRIVERS LICENSE as identification.

My Commission expires: /s/ Audrey Mary Maccia (Notary Public)

[stamped seal Audrey Mary Maccia
My commission CC791548
Expires November 17, 2002]

KENNEDY CHARGE OF DISCRIMINATION

[Fold-out Exhibit, next 2 pages]

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

☐ FEPA
☒ EEOC

CHARGE NUMBER: 151A201381

Florida Commission on Human Rel. and EEOC
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.): Ms. Patricia A. Kennedy #70060

HOME TELEPHONE (Include Area Code): (727) 376-7042

STREET ADDRESS: 7042 Maidstone Court, New Port Richey, FL 34653

CITY, STATE AND ZIP CODE

DATE OF BIRTH: [redacted]1959

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code)
Federal Express Corporation	Cat D (501 +)	(813) 736-6727

STREET ADDRESS: 1881 Main Street, Dunedin, FL 34698-0000 CITY, STATE AND ZIP CODE: COUNTY: 103

NAME: TELEPHONE NUMBER (Include Area Code):

STREET ADDRESS: CITY, STATE AND ZIP CODE: COUNTY:

CAUSE OF DISCRIMINATION BASED ON (check appropriate box(es))

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☒ AGE ☐ DISABILITY ☐ OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE
EARLIEST: 10/01/1995 LATEST: 05/01/2002
☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I. PERSONAL HARM:

For the first eight years of my employment as a courier of Federal Express, I worked hard and received high performance evaluations and repeated bonuses. Beginning in October, 1995, even before I reached the age of 40, Federal Express systematically began to target me and other more senior and older couriers through the "minimum acceptable practices program" ("MAPS") and the related "Best Practices Pays" Program ("BPP") in adopted in that year. Under these programs Federal Express granted an continues to grant preferences to younger couriers in routes, starting times, and other terms and conditions of employment, and to treat the older couriers less favorably. In addition, older workers are disciplined or threatened with discipline for minor or invented infractions, while younger workers engage in such conduct without issue. I know of several older couriers who have been terminated by Federal Express, and several others who believed that they had to leave instead o being fired or who left because of the hostile environment caused by Federal Express' discriminatory practices against older workers.

My income has been reduced and I have been frustrated and frightened by these discriminatory practices.

+

II. RESPONDENT'S REASON(S) FOR ADVERSE ACTIONS(S):

** Text is Continued on Attached Sheet(s) **

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

5/30/02 Patricia A. Kennedy
Date Charging Party (Signature)

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Month, day and year)

EEOC FORM 5 (Rev. 07/05)

FILE COPY Kennedy 389

Equal Employment Opportunity Commission
Form 5 - Charge of Discrimination, Additional Text

No reason was given.

III. DISCRIMINATION STATEMENT:

I believe I have been discriminated against due to my age 43, (DOB 4/21/59) in violation of the Age Discrimination in Employment Act of 1967, as amended.

FedEx.

Track Shipments
***Detailed* Results**

Tracking Number	827197784381
Reference Number	1078
Ship Date	04/26/2002
Delivered To	Recept/Fml desk
Delivery Location	NEWYORK NY
Delivery Date/Time	04/29/2002 09:38
Signed For By	D.HOLMES
Service Type	Priority Letter

Tracking Options:

- Obtain a Signature Proof of Delivery
- Email these tracking results to one or more recipients
- Track More Shipments

Scan Activity	Date/Time
Delivered NEW YORK NY	04/29/2002 09:38
On FedEx vehicle for delivery NEW YORK NY	04/29/2002 08:27
Arrived at FedEx Destination Location NEW YORK NY	04/29/2002 07:56
On FedEx vehicle for delivery NEWYORK NY	04/29/2002 04:53
Arrived at FedEx Destination Location NEW YORK NY	04/27/2002 10:10
Arrived at Sort Facility NEWARK NJ	04/27/2002 07:53

Left FedEx Sort Facility INDIANAPOLIS IN	04/27/2002 03:56
Held at Sort Facility INDIANAPOLIS IN	04/27/2002 03:26
Left FedEx Ramp DULLES VA	04/26/2002 23:45
Arrived at Sort Facility INDIANAPOLIS IN	04/26/2002 23:44
Left FedEx Origin Location WASHINGTON DC	04/26/2002 22:41
Arrived at FedEx Ramp DULLES VA	04/26/2002 21:12

Email Your Detailed Tracking Results
Enter your email (optional), up to three email addresses as recipients, add your message, and dick on Send Email.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

02-CV-3355 (LMM)

[Filed August 20, 2002]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Thompics, individually and on behalf of all others similarly situated,	)
Plaintiffs,	)
- against -	)
Federal Express Corporation,	)
Defendant.	)

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

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4. THE CHARGE FILED BY ROBERTSON FAILS TO PROVIDE THE PREDICATE FOR OTHERS TO PARTICIPATE IN THIS SUIT.

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Ball v. Abbot Advertising, Inc.,
864 F.2d 419 (6th Cir. 1998)

Barrow v. New Orleans S.S. Association,
932 F.2d 473 (5th Cir. 1991)

Bihler v. Singer Co.,
710 F.2d 96 (3d Cir. 1983)

Dalessandro v. Monk,
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Edelman v. Lynchburg College,
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Gitlitz v. Compagnie Nationale Air France,
129 F.3d 554 (11th Cir. 1997)

Hill v. John Chezik Imports,
869 F.2d 1122 (8th Cir. 1989)

Hipp v. Liberty National Life Insurance Co.,
252 F.3d 1208 (summarizing cases), *reh'g*

Hodge v. New York College of Podiatric Medicine,
157 F.3d 164 (2d Cir. 1998)

Novitsky v. American Consulting Eng'rs,
196 F.3d 699 (7th Cir. 1999)

Rucker v. Great Scott Supermarkets, Inc.,
528 F.2d 393 (1976), *overruled on other grounds* by
Wright v. Tennessee, 628 F.2d 949 (6th Cir. 1980)

St. Louis v. Alverno College,
744 F.2d 1314 (7th Cir. 1984)

Thiessen v. General Electric Capital Corp.,
267 F.3d 1095 (10th Cir. 2000), *cert. denied*,
122 S. Ct. 2614 (2002)

Tolliver v. Xerox Corp.,
918 F.2d 1052 (2d Cir. 1990)

Vance v. Whirlpool Corp.,
707 F.2d 483 *supplemented on other grounds on reh'g*,
716 F.2d 1010 (4th Cir. 1983)

INTRODUCTION

The plaintiffs have not come to grips with this central point: Not one of them has completed the simple steps required to commence a pattern and practice suit for age discrimination against FedEx. Those steps are to: (1) file a timely charge with the EEOC that alleges such discrimination; (2) wait 60 days before filing suit; and (3) if a notice of right to sue has been issued, file suit within 90 days of receipt of the notice. One of the plaintiffs, Patricia Kennedy (a non-New York resident), may have begun the process, but has not yet completed it. Notwithstanding their extensive submissions, the plaintiffs have not shown and cannot show that any of them has satisfied the statutory preconditions in suit under the ADEA.

ARGUMENT

1. The *Freeman* Lawsuit Does Not Provide the Charge Filing Predicate for this Case.

Plaintiffs' peristent reliance on the *Freeman* litigation as the administrative predicate for this action is misplaced. It is the opportunity to conciliate a charge with the EEOC, not later filing of litigation by private plaintiffs, that lies at the heart of the charge-filing requirement. The 60-day waiting period for filing suit under the ADEA is "designed to insure that the primary mechanism of dispute resolution – informal conciliation efforts pursued by the [EEOC] – is fully utilized before individuals are entitled to relief in the federal courts." *Vance v. Whirlpool Corp.*, 707 F.2d 483, 488, *supplemented on other grounds on reh'g*, 716 F.2d 1010 (4th Cir. 1983). That the *Freeman* plaintiffs elected to file a lawsuit that was far more expansive than the charges of age discrimination preceding it does not somehow establish that FedEx was

provided the required opportunity to conciliate with the EEOC with respect to the broad claims of age discrimination asserted in the complaint in this case by completely different plaintiffs. That opportunity can only follow the filing of a charge of discrimination that includes such claims.

Moreover, the *Freeman* complaint itself is a fatally flawed pleading that was dismissed because the plaintiffs refused to file an amended complaint within the time specified by the District Court. Contrary to the plaintiffs' contention, that dismissal operated as an adjudication of the merits of the complaint. The District Court there found that the Complaint was "so verbose that it [was] unreasonably difficult to frame a response." (Morrison Decl. Ex. 9) The Court therefore dismissed the complaint "without prejudice," gave the Plaintiffs "twenty (20) days from [September 25, 2000] within which to file an Amended Complaint," and directed them "to comply with Rule 8 of the Federal Rules of Civil Procedure." *Id.* When the *Freeman* plaintiffs failed to comply with that directive, their complaint was dismissed with prejudice. That conclusion follows from the plain language of Fed. R. Civ. P. 41(b): "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication on the merits."

The Order entered by the Eleventh Circuit denying the *Freeman* plaintiffs' motion to voluntarily dismiss their appeal recognizes that the dismissal was with prejudice. In its January 14, 2002 Order, that Court stated that "[b]ecause the plaintiffs did not amend their complaint within the time allowed by the district court, the dismissal order became final upon the expiration of the time allowed for amendment. [Citation omitted.] No certification [for an appeal] was

required under Fed. R. Civ. P. 54(b) **because the September 25, 2000, order resolved all of the claims of all of the parties**. [Citations omitted] **As such, the district court was divested of jurisdiction to take any action except in the aid of this appeal."** (Supplemental Declaration of Carl Morrison ("Morrison Supp. Decl."), Ex. 1 at 1-2 (**emphasis added**)). As required by the Court of Appeals, the Order of the District Court administratively closing the *Freeman* case expressly found that **"this matter was concluded and all proceedings before this Court subsequent to October 23, 2000, were a nullity."** (Morrison Decl. Ex. 11, at 3, **emphasis added**) The *Freeman* litigation likewise is a "nullity" in this Court, and cannot conceivably excuse the failure of the plaintiffs here to comply with the administrative prerequisites to this suit.

2. The Charges of Discrimination filed by the *Freeman* Plaintiffs Fail to Provide the Predicate for this Suit and the Doctrine of Equitable Tolling Does Not Apply.

The charges of discrimination that were the foundation for the claims of the named plaintiffs in the *Freeman* litigation, that was dismissed with prejudice, cannot now be used as a predicate for a new lawsuit filed 18 months later by an entirely new set of plaintiffs in a different court. It is no surprise that plainliffs do not cite any cases to support their outlandish argument, as, to the best of defendant's knowledge, no court anywhere has ever sanctioned such an expansive application of the "single filing" rule.[1]

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[1] To the extent that plaintiffs rely on *Tolliver* for this proposition, it should be noted that there have been substantive changes to the ADEA subsequent to the *Tolliver* decision. *Tolliver v. Xerox Corp.*, 918 F.2d 1052 (2d Cir. 1990). In *Tolliver*, the Second Ciruit merely decided that 18 plaintiffs who had previously opted into a class action, piggybacking on the claims of the named plaintiffs in

Plaintiffs implicitly concede that the EEOC charges filed by Gerald Freeman and Vincent Maccia, both plaintiffs in the *Freeman* litigation, could not satisfy even the most liberal standard for application of the "single filing" rule.[2] These charges allege only individual claims of discrimination. (FedEx Mem. at 8; Morrison Decl. Ex. 8) They therefore rely on the affidavits that Freeman and Maccia apparently submitted to the EEOC prior to the time they filed the

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that action that had timely commenced suit, could continue to piggyback on the charges of the named plaintiffs who had once represented them following decertification of the class. *See id.* at 1055. Thus, they could file their own, individual suits. *See id.* At the time of the *Tolliver* decision, the ADEA contained requirement Title VII's requirement that a suit must be filed not later than 90 days following receipt of a right-to-sue letter. *See id.* at 1057. Therefore, the *Tolliver* court also opined in dictum that the piggybacking rule in the ADEA context might not be limited to "permit[ting plaintiffs] to join a prexsiting suit in which at least one named plaintiff has filed a timely charge." The Court reasoned that such a rule would not be in clear conflict with statutory procedure present in Title VII actions. *Id.* Now, of course, the situation is different because the Civil Rights Act of 1991 amended the ADEA, in relevant part, to add a requirement that plaintiffs sue not later than 90 days after receiving final notice from the EEOC of its disposition of their charges. *See* 29 U.S.C. § 626(e). Dictum from *Tolliver* cannot abrogate this new statutory requirement. Additionally, unlike this case, the claims made by the decertified plaintiffs in *Tolliver* were within the scope of the filed EEOC charge.

[2] Notwithstanding the dismissal of their claims in the Freeman litigation, on May 9, 2002, Freeman, Maccia and certain others bound by the result in Freeman sued FedEx again. *See* Complaint in *Anthony W. Bost v. Federal Express Corporation*, 8:02-CV-837-17 MSS, Middle District of Florida. (Morrison Supp. Decl., Ex. 3) FedEx has moved to dismiss their claims with prejudice.

employment discrimination charges that were served on FedEx. (Plaintiff' Exhibits Submitted in Opposition to the Defendant's Motion to Dismiss the Complaint ("Pls. Ex.") 1-2) These unsworn, undated and unsigned affidavits are not sufficient, however, to overcome the defects in plaintiffs' complaint. It is correct that under some limited circumstances a plaintiff may rely upon affidavits and other materials filed with the EEOC before a formal charge of discrimination for purposes of assessing the timeliness of an EEOC charge.[3] But the courts do not sanction the use of undisclosed materials compiled as part of the EEOC's charge intake process to expand the scope of the formal charge that is actually served on the respondent employer for purposes of satisfying the "single filing" rule. That is because it is the charge served on the employer that necessarily defines the scope of the conciliation efforts between the EEOC and the employer.[4] Plaintiffs do not allege that the written materials upon which they now rely were served on FedEx. The documents

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[3] *See*, e.g., Edelman v. Lynchburg College, 122 S. Ct. 1145 (2002) (upholding EEOC regulation stating that an otherwise timely filed charge of discrimination under Title VII may be verified after filing); Bihler v. Singer Co., 710 F.2d 96, 99 (3d Cir. 1983) (charge must provide notice to the EEOC "of a kind that would convince a reasonable person that the grievant has manifested an intent to activate the Act's machinery", and it "must sufficiently inform the EEOC whether it was to investigate immediately or to await further communication from the [potential plaintiff] before investigation").

[4] The ADEA, 29 U.S.C. § 626(d)(2), provides that "[u]pon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion."

themselves state that they are confidential and ordinarily would not be disclosed.[5] In fact, they were not disclosed prior to commencement of the *Freeman* litigation. (Morrison Supp. Decl., at ¶ 6)

In further recognition of the fact that the individual EEOC charges filed by Freeman and Maccia, non-parties to this action, do not provide the notice required by *Tolliver,* plaintiffs point fingers at the EEOC, claiming that they are to blame for the content, or lack thereof, of the charges. This argument like the others, is without merit. In *Novitsky v. American Consulting Eng'rs,* 196 F.3d 699, 702 (7th Cir. 1999), the court of appeals debunked the myth that charging parties should not be bound by the charges that they actually signed:

> Only the charge is sent to the employer, and therefore only the charge can affect the process of conciliation. What is more, the charge is not the work of a faceless bureaucrat, leaving victims of discrimination helpless

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[5] The Freeman and the Maccia affidavits each state: "I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding." (Pls. Ex. 1 at 3; Pl. Ex. 2 at 1) Plainly the EEOC did not consider them to be charges of discrimination. Moreover, the form completed by Freeman makes that point explicitly: "ROUTINE USES. Information provided on this form will be used by Commission employees to determine the existence of facts relevant to a decision as to whether the Commission has jurisdiction over potential charges, complaints or allegations of employement discrimination and to provide such pre-charge filing counseling as is appropriate." (Emphasis added; Pls. Ex. 1 at 2.)

> protect themselves. Complainants are free to draft and file charges on their own, or hire attorneys to do so, and a charge drafted by the EEOC's staff is not filed unless the complainant signs it–as Novitsky did. If she had been dissatisfied with the staff's understanding of her answers, all she had to do was point this out and ask for an addition.
>
> ....People are free to sign legal documents without reading them, but the documents are binding whether read or not. [Citation omitted.] Any other approach would undermine the validity of the written word and encourage people either to close their eyes (hoping that they can reap the benefits without incurring the costs and risks of the venture) or to come up with hard-to-refute tales of not reading or understanding the documents they sign.
>
> ....[W]hether or not the complainant had a lawyer, whether or not she sought or listened to counsel, indeed, whether or not she read or understood the charge, it was her charge, and it did not put her former eanployer on notice of [the claim at issue.]

The plaintiff here have offered no evidence that the EEOC refused to accept a charge, or told them that the intake questionnaire and a charge are the same thing. There is no foundation offered by the plaintiffs for treating their confidential intake questionnaires and affidavits as charges of employment discrimination, and there is certainly no foundation for the proposition that FedEx was presented with the required opportunity to conciliate an allegation of class-wide discrimination.

For these reasons, as well as those stated in FedEx's initial brief, the EEOC affidavits of Freeman and Maccia could not provide the predicate for the "single-filing" rule, even if their lawsuit had not already been dismissed with prejudice.

The plaintiffs are also wrong to suggest that the "similarly situated" test for opt-in class actions under the ADEA is the test in this Circuit for application of the single-filing rule, Pls.' Mem. at 10. These are entirely distinct concepts that serve entirely different purposes: the similarly situated test relates to the power of the court to proceed on behalf of a class of employees under ADEA, while the single-filing rule defines when non-charging parties may file a discrimination suit in reliance on a charge filed by another.[6] Even in collective actions under the ADEA, it is first necessary to find that "the EEOC charge actually filed gave the employer notice of the collective or class-wide nature of the charge." *Gitlitz v. Compagnie Nationale Air France,* 129 F.3d 554,

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[6] Class actions under the ADEA are authorized by 29 U.S.C. § 626(b), which expressly borrows the opt-in class action mechanism of the Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b). Section 216(b) provides for a class action where the complaining employees are "similarly situated." The courts have adopted a number of different approaches to determining whether an ADEA action may proceed on behalf of a class using the "similarly situated" test *See Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1216-18 (summarizing cases), *reh'g & reh'g en banc denied*, 273 F.3d 1118 (11th Cir. 2001), *cert. denied,* 122 S. Ct. 1064 (2002); *Thiessen v. General Electric Capital Corp.*, 267 F.3 1095, 1102-1103 (10th Cir. 2001) (same), *cert. denied,* 122 S. Ct. 2614 (2002). The very different issue presented to this court is whether the plaintiffs' claims are due to be dismissed because of their complete failure to satisfy the charge filing and other statutory conditions to the commencement of this suit.

558 (11th Cir. 1997). Similarly, the rule in this Circuit is that "there must be some indicatiom that the grievance affects a group of individuals defined broadly enough to include those who seek to piggyback on the claim. Such a claim alerts the EEOC that more is alleged than an isolated act of discrimination and **affords sufficient notice to the employer to explore conciliation with the affected group.**" *Tolliver v. Xerox Corp.*, 918 F.2d 1052, 1058 (2d Cir. 1990) (emphasis added). Recognizing that they cannot meet this test, plaintiffs pretend that it does not exist.[7] But the fact remains that FedEx has never been served with any charge of discrimination that provides the requisite notice of alleged discrimination against the plaintiffs here, who themselves never filed charges of employment discrimination.

Finally, plaintiffs' argument that their lawsuit should be saved by application of general principles of equitable tolling is without merit. First, these principles are not designed to excuse an employee's ignorance of the legal requirements applicable to his claim. *Barrow v. New Orleans S.S. Ass'n.*, 932 F.2d 473, 478 (5th Cir. 1991) (neither lack of knowledge of applicable filing deadlines nor unfamiliarity with the legal process and lack of legal representation will toll limitations period). The Eleventh Circuit has conclusively determined that the failure of the *Freeman* plaintiffs to amend the complaint within the time specified by the District Court

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[7] Even the decision of the Seventh Circuit that is relied upon by the plaintiffs (Pls. Mem. at 9) requires that "the charge must, as the very least, contain an allegation of class-wide discrimination. This notification is necessary in order to satisfy Congress' express desire that the defendant understand, during the conciliation stage, the magnitude of his potential liability." Anderson v. Montgomery Ward & Co. 852 F.2d 1008, 1016 (7th Cir. 1988). Plaintiffs fail to meet this test as well as that set forth in Tolliver.

"resolved all the claims of the parties," and did so as of October 23, 2000. (Morrison Supp. Decl., Ex. 2, at 2) Thus, even if the Court accepts the plaintiffs' argument that the dismissal of the *Freeman* suit was without prejudice to re-filing it after the Court's stated deadline for amending the complaint, and plaintiffs have the benefit of tolling from October 26, 1999, when that suit was filed, until October 23, 2000, when it was dismissed, the 90 day period for others relying on the *Freeman* charges to file suit expired well before commencement of this action on April 30, 2002. Second, the plaintiffs attempt to join the *Freeman* litigation is of no legal consequence to this case: that case was already dismissed at the time they tried to join. At the end of the day, there is no amount of legal gamesmanship that excuses the named plaintiffs in this action from complying with the simple administrative steps necessary to commence an action under the ADEA. In fact, one of them, Patricia Kennedy, claims to be in the process of doing just that.

3. Plaintiff Robertson's Declaration Does Not Overcome the Presumption that He or His Authorized Agents Received the Notice of Right to Sue More than 90 Days Before the Commencement of this Suit.

Robertson's argument that he is a timely filing plaintiff because he did not receive the April 25, 2001 Notice of Right to sue until February 7, 2002 is without merit. The EEOC's regulations, and the charge form, required Robertson to notify the Commission, not the postal service, of any change of address. (29 C.F.R. 1601.7(b); Morrison Decl. Ex. 4 at 1.) As a result of these regulations, which impose a duty of diligence on charging parties, courts generally hold that a plaintiff is not entitled to equitable tolling where the plaintiff has failed to advise the EEOC of a change of address since the filing of the charge, and where the EEOC mailed the

Notice of Right to Sue to the last address for the charging party shown on its records. *Hill v. John Chezik Imports,* 869 F.2d 1122, 1124 (8th Cir. 1989) (the period normally runs from the date the letter is received at the most recent address provided to the EEOC; barring the action, even though the EEOC failed to send a copy of the notice to the charging party's attorney); *Ball v. Abbot Advertising, Inc.*, 864 F.2d 419, 421 (6th Cir. 1988) (same; providing a new address to the state human rights agency in insufficient); *St. Louis v. Alverno College,* 744 F.2d 1314, 1316-17 (7th Cir. 1984) (the period runs from the date the letter is received at the most recent address given to the EEOC; failure to receive the letter was the charging party's fault).

In addition to the above, Robertson's argument fails to address the presumption that his parents, whose address is on the letter according to Robertson's Declaration, received the letter, were authorized by Robertson to do so and, in all likelihood, advised him of it. At best, the declaration suggests that Robertson did nothing for over 10 months to apprise himself of the status of his charge, and he should not be allowed to benefit here from his decision to ignore the agency responsible for handling his charge of employment discrimination.

4. The Charge Filed by Robertson Fails to Provide the Predicate for Others to Participate in this Suit.

Robortson's charge alleges only an individual complaint of age and disability discrimination: "I was employed at Respondent since approximately 1984. As a result of a work place injury I became a person with a disability. My performance has always been excellent. In August 2000, Respondent refused to allow me to take my accrued leave. I was denied additional benefits to which I was entitled. On

September 8, 2000 I was temainated." (Morrison Decl. Ex. 4) There is no hint in this charge of class-wide discrimination that could provide a basis for others to rely upon Robertson's charge under the "single-filing" rule in this Circuit.[8]

5. The Court Should Not Sanction the Early Filing of Plaintiff Kennedy's Complaint Because It is in Derogation of the Important Role Played by the EEOC in Conciliation of Charges of Age Discrimination.

FedEx has yet to be served with any charge of discrimination filed by Patricia Kennedy.[9] (Morrison Supp. Decl., at ¶ 7) According to the plaintiffs' submission, the

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[8] For the convenience of the parties and the witnesses, New York is not the appropriate venue for adjudication of Robertson's complaint. It is undisputed that Robertson is a resident of Illinois, and that he was terminated by FedEx from his job as a courier in that state. (Pls. Ex. 5; Morrison Decl. Ex. 2, at 15) If Mr. Robertson is allowed to proceed with his complaint in this Court, FedEx will request the Court to transfer it to the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. § 1404(a).

[9] For precisely the same reasons explained above with respect to the EEOC affidavits filed by Freeman and Maccia, there is no legal foundation for measuring the 60-day waiting period from the date of Kennedy's submission of an intake questionnaire and affidavit to the EEOC. Like the other affidavits, the Kennedy Affidavit states expressly that it "will be considered confidential" and will not be disclosed unless the government is required to produce it in a formal proceeding. (Pl. Ex. 6, at 2) These documents were first disclosed to FedEx in the plaintiffs' filing with this Court on August 5, 2002. (Morrison Supp. Decl., at ¶ 8) These are not documents that trigger the conciliation opportunity required by law. See *supra*, n. 4.

charge has been filed and was amended on or about July 1, 2002. (Pls. Ex. 7) It is therefore undisputed that the complaint in this action was filed well before the expiration of the statutory 60-day waiting period that is a jurisdictional prerequisite to commencement of suit under the ADEA. *Dalessandro v. Monk,* 864 F.2d 6, 8 (2d Cir. 1988) ("[C]ourts have uniformly held the sixty-day waiting period under section 626(d) to be a jurisdiction requirement for private plainfiffs.") The failure to wait 60 days ordinarily requires dismissal unless special facts warrant equitable relief. *Rucker v. Great Scott Supermarkets, Inc.,* 528 F.2d 393, 395 (1976), *overruled on other grounds by Wright v. Tennessee,* 628 F.2d 949 (6th Cir. 1980). There are no special circumstances that justify the early filing here.

Plaintiffs' reliance on *Hedge v. New York College of Podiatric Medicine,* 157 F.3d 164 (2d Cir. 1998) is seriously misplaced. The complainant there filed a timely charge and withdrew it pursuant to a settlement agreement that was invalid under the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f). He then filed suit. At the time of the invalid settlement, the complainant's charge had been pending "well over the minimum 60-day period that Congress established for the EEOC to investigate or attempt conciliation before the ADEA plainfiff is allowed to file suit in Court," and Hodge was then "entitled to bring suit..." *Id.* at 168. Under those limited circumstances the Court held that "we see no statutory purpose to be served by a refiling or reopening requirement, the effect of which would be the imposition of additional delays, including another 60-day waiting period." *Id.* The Court emphasized that its "holding is extremely narrow. [It] specifically [did] not decide whether an ADEA Plaintiff whose EEOC charge was pending less than 60 days when withdrawn pursuant to an invalid settlement must refile or seek to reopen the EEOC proceedings before bringing suit."

Id. Thus, *Hodge* in no way supports the complete evisceration of the statutory 60-day waiting period proposed by the plaintiffs here. There simply is no plausible justification for Ms. Kennedy's decision to file this lawsuit early. The complaint therefore should be dismissed without prejudice to Ms. Kennedy's right to re-file it in an appropriate venue.[10]

6. Plaintiffs Cannot Change the Parties to the Lawsuit Without Compliance with Fed. R. Civ. P. 15.

The complaint was filed on behalf of fourteen named plaintiffs including "Nancy Thrompics." FedEx has no record of any such employee. (Morrison Decl., ¶ 3) Plaintiffs' cavalier response to this undisputed fact is to say that they meant to sue on behalf of "Nancy Trompics." ("Pls. Mem. at 6 n. 2) While the issue may very well have been one of a misspelling, the proper method to deal with such mistake is to make a motion to amend or correct, not to unilaterally amend the style of the case to delete Ms. Thompics and replace her with Ms. Trompics. More important, however, is the fact that the identification of Nancy Trompics does not change the legal deficiencies in plainfiifs' complaint. Plaintiffs do not contend, nor could they, that Ms. Trompics filed any charge of age discrimination prior to commencement of this action. Thus, if the Court allows her to participate in this action, her ciaim is due to be dismissed because she, like the other

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[10] For the convenience of the parties and the witnesses. New York is not the appropriate venue for adjudication of Patricia Kennedy's complaint. She alleges in her charge that she resides in Florida, and was discriminated against by FedEx in her employment there. (Pls. Ex. 7) If Ms. Kennedy elects to re-file her complaint in this Court, FedEx will request the Court transfer it to an appropriate venue pursuant to 28 U.S.C. § 1404(a).

plaintiffs, failed to comply with the prerequisites to suit under the ADEA.

CONCLUSION

For the reasons stated, the Court should dismiss the complaint in this action because none of the fourteen plaintiffs have complied with the statutory conditions precedent to suit. It is undisputed that twelve of the plaintiffs either never filed a charge of age discrimination or allowed the period for filing suit to expire.[11] Plaintiff Robertson has failed to overcome the presumption that he or his anthorized agent received his right to sue letter many months before this lawsuit was filed, and he cannot sue FedEx now. Plaintiff Kennedy has not complied with the 60-day waiting period that is a jurisdictional predicate for suit under the ADEA. Her claim is due to be dismissed without prejudice to her right to re-file it in an appropriate forum at the appropriate time.

Dated: New York, New York
August 20, 2002

Respectfully submitted,

By: /s/ _____
Traycee Ellen Klein, Esq. (TK 2755)

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[11] The following eleven plaintiffs never filed a charge of discrimination against FedEx: Paul Holowecki, Donna Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank Martinez, Kelly Martinez, Kenneth Murtchler, and Nancy Trompics. Kevin McQuillan filed a charge, but his notice of right to sue was mailed on June 11, 1999, and plaintiffs apparently concede that McQuillan received his notice.

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

02 Civ. 3355(LMM)

[Filed October 8, 2002]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Trompics, individually and on behalf of others similarly situated, Plaintiff,	)
v.	)
FEDERAL EXPRESS CORPORATION, Defendant.	)

JUDGES: Lawrence M. McKenna, U.S.D.J.

MEMORANDUM AND ORDER

McKENNA, D.J.

Plaintiffs Paul Holowecki, et al. ("plaintiffs")[1] bring this action against their employer or former employer, defendant Federal Express Corporation ("Federal Express"), alleging age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq. ("ADEA"), the New York Human Rights Law ("NYHRL"), and the laws of California, Florida, Illinois, Michigan, and New Jersey. Federal Express moves to dismiss the complaint, which was filed on April 30, 2002, under Federal Rules of Civil Procedure 12(b)(1)("Rule 12(b)(1)") and 12(b)(6) ("Rule 12(b)(6)") on the grounds that plaintiffs' claims are time-barred under 29 U.S.C. § 626(d). For the reasons set forth below, the Court grants the motion.

BACKGROUND

Plaintiffs, who are at least 40 years of age, are or were employed by Federal Express as couriers. (Compl. ¶ 6.) They bring this suit on behalf of themselves and others similarly situated. (*Id.*)

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[1] In the complaint, plaintiff Nancy Trompics's name is misspelled as Nancy Thompics. Plaintiffs subsequently corrected the caption in their opposition to defendant's motion to dismiss. Federal Express now argues that plaintiffs violated Federal Rule of Civil Procedure 15 by not requesting leave of the court before amending the caption. The Court treats plaintiffs' correction of the caption as a request to amend and finds the requirements of Rule 15 satisfied. *See* Fed. R. Civ. P 15(a) ("leave [to amend] shall be freely given when justice so requires."); *Arfons v. E.I. Du Pont De Nemours & Co.*, 261 F.2d 434, 435 (2d Cir. 1958) ("It is now well established that dismissals for mere technical defects or ambiguities in pleadings are not favored.").

Federal Express is a corporation engaged in the transportation of packages by air and ground throughout the United States and elsewhere. (*Id.* ¶ 3.) Federal Express is an employer within the definition and coverage of 29 U.S.C. § 630(b) of the ADEA, the New York Human Rights law, and other state laws prohibiting age discrimination. (*Id.* ¶ 5.)

Prior to this action, two of the plaintiffs, Kevin McQuillan ("McQuillan") and George Robertson ("Robertson") filed charges of discrimination with the Equal Employment Opportunity Commission ("EEOC"). (Morrison Decl. ¶¶ 5-7.) McQuillan filed a charge with the EEOC alleging age discrimination on September 11, 1998. (*Id.*, Ex. 3.) The EEOC found no cause to believe discrimination had occurred and issued a notice of right to sue on June 11, 1999. (*Id.*) Robertson filed a charge with the EEOC alleging age and disability discrimination on December 1, 2000. (*Id.*, Ex. 4.) The EEOC dismissed the charge and issued a notice of right to sue on April 25, 2001. (*Id.*) In addition, on December 3, 2001, plaintiff Patricia Kennedy ("Kennedy") filed a questionnaire and affidavit with the EEOC on behalf of herself and others alleging age discrimination by Federal Express. (Pl.'s Ex. 6.) She formally filed a charge of discrimination with the EEOC on May 30, 2002, one month after the current action was commenced. (Pl.'s Ex. 7.) Federal Express has no record of charges of discrimination being filed by any of the other named plaintiffs. (Morrison Decl. ¶ 7.)

Plaintiffs allege in the current action that since 1994, when Federal Express adopted certain practices and procedures, and each year thereafter, Federal Express has followed a pattern or practice of employment procedures that discriminate because of age against plaintiffs and other

similarly situated experienced couriers who are over 40 years old. (Compl. ¶¶ 12, 23.)

Federal Express moves to dismiss the complaint under Rules 12(b)(1) and 12(b)(6) on the grounds that plaintiffs failed to file a charge of discrimination with the EEOC prior to bringing the current lawsuit. Plaintiffs oppose the motion, stating that even though 11 plaintiffs in this case did not file charges with the EEOC, the single filing rule allows them to "piggyback" their claims onto the charges filed by either Jack Haneline II ("Haneline") or those filed by the plaintiffs in *Freeman et al. v. Federal Express*, No. 99-2466 (M.D.Fl. Sept. 25, 2000), *aff'd*, 2002 U.S. App. LEXIS 5816, 2002 WL 187185 (11th Cir. 2002) ("*Freeman*"). Neither Haneline nor the *Freeman* plaintiffs are plaintiffs in the current action. These charges are described briefly below.

A. The Haneline Charge

In May 1995, Haneline filed a charge with the EEOC, alleging that he was personally discriminated against under Title VII and the ADEA. (Compl. ¶ 29; Morrison Decl., Ex. 5.) The EEOC dismissed this charge in June 1996, but Haneline never filed suit. (Morrison Decl., Ex. 5.)

B. Charges filed by Plaintiffs in *Freeman et al. v. Federal Express*

Between 1996 and 1998, six Federal Express employees filed charges with the EEOC, alleging that they were personally subject to age discrimination. (Morrison Decl., Ex. 8.) These charges were dismissed. (*Id.*) Subsequently, on October 26, 1999, these employees brought an action in federal court alleging age discrimination. (Pl.'s Ex. 3.) No class was ever certified in the *Freeman* litigation, and the case

was dismissed without prejudice by the district court on September 25, 2000. (Morrison Decl. ¶¶ 11-12, Ex. 9.)

Some of the plaintiffs in this case attempted to join the *Freeman* suit in March 2001 by listing themselves as parties in a proposed amended complaint that the *Freeman* plaintiffs sought to file with the District Court on March 6, 2001. (Morrison Decl. ¶13, Ex. 10.) No order was ever issued granting the *Freeman* plaintiffs leave to amend, or allowing the plaintiffs in this action to join the *Freeman* litigation. (Morrison Decl. ¶ 13.)

STANDARD OF REVIEW

When deciding a motion to dismiss, the court must "assum[e] the truth of all factual allegations contained in the complaint and draw[] all inferences in the plaintiff's favor." *Boyd v. Nationwide Mut. Ins. Co.*, 208 F.3d 406, 409 (2d Cir. 2000); *Mills v. Polar Molecular Corp.*, 12 F.3d 1170, 1174 (2d Cir. 1993). Normally the court must limit itself "to a consideration of the facts that appear on the face of the complaint." *Ryder Energy Distribution Corp. v. Merrill Lynch Commodities Inc.*, 748 F.2d 774, 779 (2d Cir. 1984). However, in resolving a motion to dismiss under Rule 12(b)(1), a district court may refer to evidence outside the pleadings. *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). In addition, if a defendant's motion to dismiss is for failure to state a claim, the court can consider any documents attached to the complaint as exhibits or incorporated into the complaint by reference. *Newman & Schwartz v. Asplundh Tree Expert Co., Inc.*, 102 F.3d 660, 662 (2d Cir. 1996). In such cases, the court may also consider any documents upon which a plaintiff "solely relies" and which are "integral" to its claims. *Int'l Audiotext Network, Inc. v. AT&T*, 62 F.3d 69, 72 (2d Cir. 1995); *see also Cortec*

Indus., Inc. v. Sum Holding L.P., 949 F.2d 42 (2d Cir. 1991).

DISCUSSION

A. Section 626(d) of the ADEA

Section 626(d) of the ADEA provides:

> No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed-
>
> > (1) within 180 days after the alleged unlawful practice occurred; or
> > (2) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.
>
> Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference and persuasion.

29 U.S.C. § 626(d).

Because New York "has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such

discriminatory practice," an individual alleging age discrimination occurring in this state has 300 days after the alleged unlawful activity to file a charge with the EEOC. 29 U.S.C. § 633(b).[2] An ADEA action may be commenced in federal court: (i) as early as sixty days after filing a charge of discrimination with the EEOC, or (ii) as late as ninety days after receiving an EEOC right-to-sue notice. *See id.* § 626 (d), (e); *Vollinger v. Merrill Lynch & Co., Inc.*, 198 F. Supp. 2d 433, 439 (S.D.N.Y. 2002).

An exception to the ADEA's time limitations is the single filing rule. "The single filing rule provides that where one plaintiff has filed a timely charge of discrimination with the appropriate administrative agency, other non-filing plaintiffs may join in a later action in federal court if their individual claims arise out of similar discriminatory treatment in the same time frame." *Levy v. United States Gen. Accounting Office*, No. 97 Civ. 4016, 97 Civ. 4488, 1998 U.S. Dist. LEXIS 5567, 1998 WL 193191, at *2 (S.D.N.Y. Apr. 22, 1998), *aff'd*, 175 F.3d 254 (2d Cir. 1999); *see Snell v. Suffolk County*, 782 F.2d 1094, 1100 (2d Cir. 1986). In *Tolliver v. Xerox Corp.*, the Second Circuit held that in addition to allowing non-filing plaintiffs to opt into an existing action, the single filing rule allowed non-filing plaintiffs to file their own individual actions when they had attempted to opt into a class action brought by filing plaintiffs, but the class had later been decertified. 918 F.2d 1052 (2d Cir. 1990). The filing

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[2] The Court notes that the laws of the other states under which plaintiff brings suit also have provisions prohibiting age discrimination. *See* Cal. Gov't Code § 12900 *et seq.* (California); Fla. Stat. Ann. § 112.043 - .044, § 760.01 (Florida); Ill. Comp. Stat. Ann. Ch. 775, act 5/1-101 *et seq.* (Illinois); Mich. Comp. Laws Ann. § 37.2102 *et seq.* (Michigan); N.J. Stat. Ann. §§ 10:3-1, 10:5-1 (New Jersey).

plaintiff's charge, however, must have contained "some indication that the grievance affects a group of individuals defined broadly enough to include those who seek to piggyback on the claim." *Id.* at 1058. "Such a claim alerts the EEOC that more is alleged than an isolated act of discrimination and affords sufficient notice to the employer to explore conciliation with the affected group." *Id.* "The rationale for this rule is to avoid needless repetition in the filing of administrative charges when the initial claim was sufficient to put the employer on notice of the alleged violations and afford the employer an opportunity for conciliation with the aggrieved employees." *Levy*, 1998 U.S. Dist. LEXIS 5567, 1998 WL 193191, at *2.

B. ADEA Claims of McQuillan and Robertson

McQuillan and Robertson did file charges with the EEOC before bringing this suit. However, these filings were untimely. McQuillan filed his charge with the EEOC on September 11, 1998, nearly four years after the implementation of the policies challenged in this lawsuit. (Morrison Decl., Ex. 3.) Robertson filed his EEOC charge on December 1, 2000, over six years after plaintiffs claim the policies were implemented. (*Id.*, Ex. 4.) Since McQuillan and Robertson did not file their EEOC charges within 300 days of the alleged unlawful practice, as is required by the ADEA, their claims are time-barred.

C. Kennedy's ADEA Claim

Kennedy filed an administrative charge on May 30, 2002, one month after the complaint in this case was filed. (Pl.'s Ex. 7.) Therefore, she has failed to meet the requirement of Section 626(d) that "[n]o civil action may be commenced by an individual under this section until 60 days after a charge

alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission." 29 U.S.C. § 626(d). Kennedy argues that her filing of a questionnaire and affidavit with the EEOC in December 2001 satisfies the charge requirement. (Pl.'s Ex. 6.) If that were true, Kennedy's claim in this action would be timely since more than 60 days would have passed since she filed her EEOC charge. However, the Court rejects this argument.

Section 626(d) specifically requires that a "charge" be filed with the EEOC prior to commencing a civil action. 29 U.S.C. § 626(d). If Congress had intended that an intake questionnaire or affidavit constituted sufficient notice to the EEOC of alleged discrimination, it could have specifically stated so, but it did not. While it is true that on occasion, courts have found that an intake questionnaire constitutes a formal charge, *see, e.g., Angotti v. Kenyon & Kenyon*, 929 F. Supp. 651 (S.D.N.Y. 1996); *O'Connor v. Pan Am*, No. 88 Civ. 5962, 1990 U.S. Dist. LEXIS 5403, 1990 WL 118286 (S.D.N.Y. May 4, 1990); *Halas v. Ford Motor Co.*, 987 F. Supp. 227 (W.D.N.Y. 1997), these cases involved situations where the plaintiff had been led by the EEOC to believe that the questionnaire alone constituted sufficient notice to the EEOC of the alleged discrimination. Such is not the case here. Therefore, the Court finds that Kennedy's questionnaire and affidavit should not be considered the equivalent of a charge, and that her charge, dated May 30, 2002, was untimely since it was filed one month after the current action was commenced.

D. ADEA Claims of the other 11 Plaintiffs

The other 11 plaintiffs never filed charges with the EEOC. However, they argue that they are covered by the single filing rule, which in limited circumstances, permits a

party who has not filed an administrative charge to participate in a lawsuit by piggybacking on the administrative charge of another party who has properly commenced suit. These plaintiffs attempt to "piggyback" on either the actions brought by Haneline or the plaintiffs in *Freeman*. However, the Court finds that neither charge allows plaintiffs to take advantage of the single filing rule.

1. The Haneline Charge

While Haneline filed a charge, this charge alleged that he was being discriminated against personally. (Morrison Decl., Ex. 5.) It failed to give the EEOC "some indication that the grievance affects a group of individuals defined broadly enough to include those who seek to piggyback on the claim." *Tolliver*, 918 F.2d at 1058. Therefore, the plaintiffs in this action are unable to bring this suit based on Haneline's charge.[3]

2. The *Freeman* charges

Similarly, none of the charges filed by the *Freeman* plaintiffs gave any indication that the grievance affected a group of individuals. (Morrison Decl., Ex. 8.) Therefore, the plaintiffs may not piggyback off of these charges. As discussed above, the Court also rejects plaintiffs' argument that because their questionnaires and affidavits alleged group

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[3] Moreover, while Haneline received a notice of right to sue in June 1996, he never commenced a lawsuit. As the Fifth Circuit has recently noted, "no circuit has ever authorized piggybacking on an EEOC charge when the individual who filed the charge never actually filed suit." *Bettcher v. Brown Schools, Inc.*, 262 F.3d 492, 495 (5th Cir. 2001).

discrimination, the single filing rule is applicable. As the Seventh Circuit has stated:

> [I]t is the charge rather than the questionnaire that matters. Only the charge is sent to the employer, and therefore only the charge can affect the process of conciliation. What is more, the charge is not the work of a faceless bureaucrat, leaving victims of discrimination helpless to protect themselves. Complainants are free to draft and file charges on their own, or hire attorneys to do so, and a charge drafted by the EEOC's staff is not filed unless the complainant signs it ... If she had been dissatisfied with the staff's understanding of her answers, all she had to do was point this out and ask for an addition.

Novitsky v. Am. Consulting Eng'rs, L.L.C., 196 F.3d 699, 702 (7th Cir. 1999).

The Court also notes that *Freeman* is distinguishable from *Tolliver*, in which the single filing rule was held to be applicable. In *Tolliver*, 18 employees who had not filed administrative charges opted into an existing ADEA class action, in which plaintiffs had filed valid administrative charges. 918 F.2d at 1055. The class, however, was later decertified. The Second Circuit allowed the non-filing employees to then bring individual actions by piggybacking on the charges of the filing plaintiffs, despite the class decertification. *Id.* at 1057.

Unlike *Tolliver*, however, the district court never certified a class in *Freeman*. (Morrison Decl. ¶¶ 11-12, Ex. 9.) In addition, the plaintiffs in this action attempted to become part of the Freeman action only after it had been dismissed. (Morrison Decl. ¶ 13, Ex. 10.) The Court declines to extend

the single filing rule to a case containing such procedural differences. *See Bliss v. Rochester City Sch. Dist.*, 196 F. Supp. 2d 314, 323 (W.D.N.Y. 2002) ("[P]laintiff also argues that she was not required to file any charge at all because she considers herself to be a member of a class action in the *Seils* case, and she attempts to 'piggyback' on the charges filed in that case ... [T]his argument fails because no class was ever certified in the *Seils* case").

D. Plaintiffs' State Law Claims

Because plaintiffs' federal claims under the ADEA are dismissed, and plaintiffs are not asserting subject matter jurisdiction under 28 U.S.C. § 1332, the Court declines to retain jurisdiction over plaintiffs' state claims. *See Rocco v. New York State Teamster's Conference Pension and Ret. Fund*, 281 F.3d 62, 72 (2d Cir. 2002).

CONCLUSION

For the foregoing reasons, the Court grants Federal Express's motion to dismiss plaintiffs' ADEA claims, without leave to replead. Because the Court dismisses plaintiffs' federal claims, it declines to exercise jurisdiction over plaintiffs' state law claims. Complaint dismissed.

Dated: October 8, 2002

New York, New York

SO ORDERED.

/s/
Lawrence M. McKenna
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

02 CIVIL 3355(LMM)

[Filed October 23, 2002]

PAUL HOLOWECKI, et.al.,
Plaintiff,

-against-

FEDERAL EXPRESS CORP.,
Defendants.

JUDGMENT

Defendant having moved to dismiss pursuant to FRCP 12(b)(1) & (6), and the matter having come before the Honorable Lawrence M McKenna, United States District Judge, and the Court, on October 8, 2002, having rendered its Memorandum and Order granting defendant's motion to dismiss plaintiffs' ADEA claims without leave to replead, and declining to exercise jurisdiction over the state law claims, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memorandum and Order dated October 8, 2002, defendant's motion to dismiss plaintiffs' ADEA claims is hereby granted without leave to replead and the Court declines to exercise jurisdiction over the state law claims.

DATED: NYC, NY

October 23, 2002

JAMES M. PARKISON

Clerk of Court

BY:

/s/ James M. Parkison

Deputy Clerk

UNITED STATES DISTRICT COURT
Southern District of New York

02-CV-3355 (LMM)

[Filed October 23, 2002]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Trompics, individually and on behalf of others similarly situated, Plaintiff,	)
v.	)
FEDERAL EXPRESS CORPORATION, Defendant.	)

MEMORANDUM IN SUPPORT OF MOTION TO ALTER AND AMEND THE MEMORANDUM AND ORDER OF OCTOBER 9, 2002

Plaintiffs have moved to alter or amend because this Court's Memorandum and Order of October 9, 2002, overlook the decision in *Edelman v. Lynchburg College*, __ U.S. __, 122 S. Ct. 1145 (2002) and a valid EEO regulation defining a charge 29 C.F.R 1626.6 and 1628(b). Those authorities provide that the first written statement of a complainant is a charge if it identifies the employer and the nature of the discriminatory conduct. Accordingly, the affidavits of Kennedy and Robertson were charges filed more

that 60 days before this suit was filed; and they placed EEOC on notice of the class-wide nature of the allegations of Federal Express' past and continuing conduct made by the plaintiffs in these cases. Those charges support their own claims and the claims of 11 of the 12 other plaintiffs.

In addition, the Memo. fails to hold that the charge of Robertson and perhaps that the Complaint alleges unlawful employment practices by defendant from 1994 through the present. Complaint, paras. 23, 24 and 30. Where the plaintiff alleges a pattern or practice of continuing unlawful practices, each discriminatory event presents a viable and timely claim. *National Railroad Passenger Corp v. Morgan*, 122 S.Ct. 2061, 2071 (2002); and *Bazemore v. Friday*, 478 U.S. 385, 395-396 (1986).

In addition, the Memo. seeks to prevent several plaintiffs from joining this suit by distinguishing the Second Circuit's decision in *Tolliver v. Xerox Corp.*, 918 F.2d 1052 (2d Cir. 1990), *cert. den.* 490 U.S. 985, on grounds that are incompatible with that decision. Under a correct application of that decision, those plaintiffs are permitted to join the case without any class certification. We note that the Memo addressed that timeliness of administrative charges (and the period of time for the plaintiff can seek relief) issue prematurely, and the Court should permit discovery on the defendant's statute of limitations defense, on the question of when and what of charges of age discrimination were filed by couriers and which of those charges (if any) were settled by Federal Express. *Zipes v. Trans World Airlines*, 455 U.S. 385 (1892).

1. The Affidavits of Kennedy and Robertson Were Charges that Were Timely Filed More Than 60 Days Before This Suit was Filed, and Placed EEOC on Notice of the Allegations of Class and Wide Continuing Discriminaton; Those Charges Support the Claims of 13 out of the 14 Plaintiffs.[1]

This Court has ruled that the charges of Plaintiffs Kennedy, Robertson and McQuillan were "untimely" and rejected plaintiff's arguments that the questionnaire and affidavits they and other plaintiffs filed constituted a charge as defined by the valid regulations of the U.S. Equal Employment Opportunity Commission ("EEOC"). Memorandum and Order ("Memo") at pp. 8-9, and 10-11. The Court's ruling overlooks and is contrary to the decision in *Edelman v. Lynchburg College*, *supra*, 122 S. Ct. 1145 and the valid regulations of the EEOC. 29 C.F.R. 1626 and 1628 (b) and (c).

The Supreme Court ruled: "We accordingly hold the EEOC's relation-back regulation to be an unassailable interpretation of Sec 706" of Title VII. *Edelman v. Lynchburg College*, *supra*, 122 S.Ct. at 1149-1153 (quote from 1152). The EEOC regulations under Title VII and the ADEA both provide in substantively identical terms that the intake questionnaire and the five page affidavit Plaintiff Kennedy was a charge when she filed it on December 3, 2001, and the affidavits filed by Robertson and other plaintiffs were

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[1] Plaintiffs do not challenge Morrison's affidavit insofar as it shows that EEOC sent McQuillan a right to sue letter on June 11, 1999, and that he did not fil suit. Morrison Aff. para. 3, Def. Ex.3. Nor do they challenge the law as stated in the Court's footnote 3, p. 10. Accordingly, this motion does not seek to continue the participation of McQuillan in this suit.

charges, when filed. 29 C.F.R. 1601.12(b) ("Title VII"); 29 (1626.6) and 29 C.F.R.1628(b).

The charge filing requirement of ADEA was to a large extent modeled after the filing provision of Title VII. *Tolliver v. Xerox Corp., supra* 918 F.2d at 1055.

In her affidavit and questionnaire Plaintiff Kennedy named and provided an address for Federal Express Corporation, and gave five pages of detail under oath about the age discriminatory application of Federal Express' employment practices that she and other older couriers were receiving from Fed. Ex. P. Ex. 6, Affidavit, pp. 1-5. In that charge she stated that the Best Practices Pays ("BPP") policy of Federal Express "was absolutely applied in a discriminatory manner...I know of several older couriers who were fired and/or constructively terminated as a result of this BPP policy...I don't know of a single younger employee who lost his job because of such policies." P. Ex. 6, Aff. at p. 2. She also charged that "Federal Express does not want us pre-1988 employees to continue our employment lest they will have to pay for our retirement health benefits if we can complete 10 continuous years between (ages) 45 and 55." *Id.* at p. 5.

The ADEA regulation states "...a charge shall be in writing and shall name the prospective respondent and shall generally allege the discriminatory acts." 29 C.F.R. 1626.6. The regulation also states that "notwithstanding the provisions of para. (a) of this section charge is sufficient when the Commission receives from the person making the charge either a written statement or information reduced to writing that conforms to Section 1626.6." 29 C.F.R. 1626.8(b). Memo. See to the contrary, at pp. 8-10.

Under the valid regulation of EEOC, therefore, Plaintiff Kennedy filed her charge on December 3, 2001, more than 60 days before the filing of this suit, when she filed her affidavit and filled out a questionnaire on that date. P. Ex. 6.

This Memo reasoned that "If Congress intended that an intake questionnaire or affidavit constituted sufficient notice to the EEOC of alleged discrimination, it could have specifically stated so, but it did not." Memo. at p. 8. While it is true that Congress could specifically have defined the term "charge", it chose not to do so. As the Supreme Court ruled, "neither provision [of Title VII] defines charge, which is likewise undefined elsewhere in the statute." *Edelman v. Lynchburg College*, *supra*, 122 S. Ct. at 1149.

Similarly, Congress chose not to define the word "charge" in the ADEA when it adopted a charge filing requirement similar to that of Title VII into the ADEA. Sec. 4(d) and Sec. 11 of the ADEA, 29 U.S.C. 623(d) and 631. Rather the ADEA granted broad authority to the EEOC to "issue such rules and regulations as it may consider necessary or appropriate for carrying out" the provisions of the ADEA. Sec. 9, 29 U.S.C. 628. The regulations of EEOC under Title VII of the ADEA are consistent with the purpose of both acts.

Title VII requires a charge to be under oath. Sec. 706(b) of Title VII, 42 U.S.C. 2000e-5(b). Neither the ADEA nor the regulation implementing it imposes that requirement. Sec. 4(d), 29 U.S.C. 623(d); and 29 C.F.R. 1626 and 1628. The minimum necessary to file a charge under the ADEA is less than that under Title VII. The written statement of Kennedy was sufficient when filed to satisfy the higher requirements of a Title VII charge, because it was under oath, and because it identified the employer and the general nature of the allegations of discrimination. P. Ex. 6. Her charge was more

than sufficient to satisfy the lesser standard of the ADEA for filing a charge. 29 C.F.R. 1626;29 C.F.R. 1628 (b).

The Supreme Court sustained, without dissent, the EEOC regulation under Title VII defining what kind of written statement is adequate to be considered a charge as valid and lawful under that Act. *Edelman v. Lynchburg College*, *supra*, 122 S. Ct. at 1150-1152. The holding and reasoning of the Court applies to the ADEA, and EEOC's regulation issued thereunder, because the Title VII procedure and regulation predated and was a model for that of the ADEA, and both statutes are administered by EEOC. *Edelman v. Lynchburg College*, *supra*, 122 S. Ct. at 1152 ("the regulation was six years old" in 1972 "and had been upheld and applied by the federal courts" by that time); *Tolliver v. Xerox Corp.*, *supra*, 918 F.2d at 1055-56. Congress is therefore presumed to have expressed its consent to the Title VII regulation of EEOC. *Id.*

This Court relied upon a 1999 decision of the Seventh Circuit in ruling that Plaintiff Kennedy's charge was untimely. *Notivitsky v. Am. Consulting Eng'rs, L.L.C.*, 196 F.3d 699, 702 (7th Cir. 1999). That 1999 decision rested in significant part on the ability of complainants and their attorneys to draft charges, and the fact that complainants are free to refuse to sign the charge. 196 F.3d at 701-702, quoted at Memo. p. 11.

This Court's holding that a questionnaire and affidavit is not the charge, however, cannot survive the later decision of the Supreme Court, which rejects the reasoning that the charging party is responsible for signing a charge, even if it does not convey the essential elements of the affidavit and questionnaire of the charging party, by holding that Title VII is a "remedial scheme in which laypersons, rather than

lawyers, are expected to initiate the process." *Edelman, supra*, 122 S.Ct. at 1150.[2]

In any event, the holding in *Edelman v. Lynchburg College, supra*, makes it clear that the EEOC regulation is the appropriate measure of what constitutes a charge, rather than the form on which the written statements make. *Id.* Accordingly, the language quoted from *Notivitsky v. Am. Consulting Eng'rs, L.L.C.*, 196 F.3d at 702 cannot survive the intervening decision in *Edelman v. Lynchburg College, supra*.

Plaintiff Kennedy's affidavit of December 3, 2001 identified the name and address of the employer, and the nature of the conduct of which she complained. P Ex. 6. That statement was more than adequate to advise the EEOC of the identity of the employer, and the age based nature of her complaint, and that she was alleging that other older couriers were being harmed, and therefore was a charge under the lawful regulation of EEOC. 29 C.F.R. 1626 and 29 C.F.R. 1628(b).

Under the single filing rule, the 11 plaintiffs who did not file charges are able to piggy back onto the charges of Plaintiff' Kennedy and Robertson, because their affidavits gave the EEOC notice of allegations of company wide discrimination against older couriers. *Tolliver v. Xerox Corp., supra* 918 F.2d 10 at 1056-59.

Similarly, Freeman and Maccia also filed detailed answers to questionnaires and affidavits that provided EEOC with

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[2] While the Supreme Court did not cite the *Notivitsky* decision, it understood that it was resolving a conflict among the circuits. 122 S.Ct. 12248-49.

ample notice of what kinds of age discriminatory conduct they alleged in Plaintiffs' Exhibits 1 and 2. They too provided ample notice to EEOC of the scope of the discriminatory conduct against them and other older couriers they were seeking to have corrected. *Id.* Those written statements were also charges within the definition of the valid regulation of the EEOC, and showed that EEOC was on notice by June 6, 1996 of the charge of a widespread national pattern or practice of age discriminatory conduct at least through March, 2002 when the *Freeman* case ended.

2. The Charges of Robertson and Kennedy Were Timely Filed within 300 Days of the Injury They Suffered from Federal Express' Continued and Continuing Discriminatory Practices.

Under settled law, a claim under Federal equal employment opportunity law does not arise until the "alleged unlawful practice" has occurred. *National Railroad Passenger Corp v. Morgan*, ___U.S. __, 122 S. Ct. 2061, 2070 (2002); 29 U.S.C. 623(d); 42 U.S.C. 2000e-5(e)(1); See also, *Delaware State College v. Ricks*, 449 U.S. 250 (1980). Each discriminatory practice occurs on the date it happened. When an employer engages in a pattern of discriminatory conduct over time, it creates viable and timely claims each time it engages in any unlawful practice. *National Railroad Passenger Corp. v. Morgan, supra*, 122 S.Ct. at 2071; *Bazemore v. Friday*, 478 U.S. 385, 395-396 (1986)

This Court ruled, without citation to either of those cases, that Plaintiff Robertson's charge was untimely, because is was not filed within 300 days of the implementation of the pattern of alleged unlawful practices in Nov. 1994, but "over six years after plaintiffs' claim they were implemented." Memo. at p. 8. Although the Court's decision does not expressly so

hold, the Court's ruling may also have been applied to Plaintiff Kennedy, because the Court dismissal of the Complaint is "without leave to re-plead." Memo. at p. 13.

However, the Complaint (paras. 23, 24 and 30) unambiguously alleges both that the age discriminatory practices of the defendant commenced in 1994, and that those discriminatory practices continue and have continued each year, and are a pattern of continuing behavior and conduct of defendant Federal Express. The Complaint states that Federal Expressed commenced the discriminatory practices in 1994 and "each year thereafter Federal Express has followed" a pattern practice of employment procedures that discriminate because against plaintiffs and others similarily situated courier over 40....". And that "[e]mployment practices that discriminate against older couriers and favor younger couriers...are the prevailing pattern or practice of Federal Express" and that "Federal Express has continued to follow that pattern or practice to the present" and "... has no plans to end that practice." Complaint, Paras. 23 and 24. In addition the Complaint alleges that "Unless restrained by order of this Court, the defendant will continue to pursue policies and practices that are the same or similar or related to the policies and practices alleged." Complaint, Par. 30. The allegations of the Complaint must of course be accepted as true on a motion to dismiss. Memo. at p. 5.

The Memorandum of the Court erred in ruling that the charges of Robertson and (perhaps) Kennedy were untimely, because that ruling fails to recognize that each application of the discriminatory policy or plan constitutes a discrete act of discrimination and starts or restarts the period of limitations for each employee harmed, so that the 300 day limitations period for filing a charge starts to run from the most recent application of that policy. *Bazemore, supra*; *Nation Passenger*

Corp. v. Morgan, supra; *Courtney v. La Salle University*, 124 F.3d 499, 505 (3d Cir. 1997); and *Rivera-Rodriguez v. Frito Lay Snacks Caribbean*, 265 F.3d 14, 21-22 (1st Cir. 2001).

The Complaint does not make any allegation that Federal Express adopted facially discriminatory practices beginning in 1994, but alleges that Federal Express adopted new employment practices which were intended to and did have a discriminatory effect, and/or were applied in a discriminatory way.

Plaintiff Robertson alleges that he was harmed by defendant's practices in August, 2000 and that he was wrongfully discharged because of his age on September 7 or 8, 2000; and he filed his formal charge on December 1, 2000, less than ninety days from the date of the discharge. Deft. Ex. 4. His charge was timely filed.

Yet under the Memo of this Court, Plaintiff Robertson could not have filed a charge the same date that he was terminated, because that date is more than five years after Federal Express began its discriminatory practices in 1994. Memo at pp. 3 and 8. Deft. Ex. 4. Similarly, Plaintiff Kennedy's charge alleges discrimination against her beginning in October, 1995, when she was less than 40 years of age, at an age when she could not have filed a charge under the ADEA. She alleges that Federal Express has continued to discriminate against her on the basis of age each year thereafter, thereby reducing her income each year, through the date the formal charge was filed on May 30, 2002. P. Ex. 6 and P. Ex. 7. Under settled law, therefore, the charges of Robertson and Kennedy were timely when filed.[3]

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[3] The Complaint alleges that "Some of the Plaintiffs' in this case timely notified the EEOC of the discriminatory practices by Federal

3. The Decision in Tolliver v. Xerox Corp. is Applicable to This Case.

This Court ruled that the *Freeman* charges and case did not place Federal Express on notice of allegations that it engaged in a nationwide pattern or practice of discrimination against older couriers and attempted to distinguish the decision in *Tolliver v. Xerox Corp.*, 918 F.2d 2, 1052 (2d Cir. 1990) because 1) "the district court never certified a class" in that case; and 2) because [some of] "the plaintiffs in this action attempted to become part of the Freeman case after it had been dismissed." Memo. pp. 11-12.

By virtue of the opt-in provisions of the ADEA, a suit under the ADEA that alleges discrimination against plaintiffs and others similarly situated is a collective action when filed. "The ADEA....expressly authorizes employees to bring collective age discrimination actions..." *Sperling v. Hoffman La Roche*, 493 U.S. 165, 169 (1989).

The *Freeman* case was such an action by six plaintiffs under the ADEA, and no class certification was necessary to make it one.

The Second Circuit has ruled that the "Application of the single filing rule to individual actions is fully warranted."

Express more than 60 days prior to this date." Para. 29, last sentence. The charges of Kennedy and Robertson support this claim. In addition, Plaintiff Robertson has offered a declaration that he did not receive the right to sue letter issued by EEOC until February 7, 2002, less than 90 days before this suit was filed. P. Ex. 5. The factual issues concerning Federal Express' affirmative defense that he did not file within 90 days of the issuance of the right to sue letter is not ripe for decision on this motion to dismiss.

Tolliver v. Xerox Corp., *supra*, 918 F.2d at 1057. In addition, because the administrative charges in the earlier filed suit had "alerted the EEOC to a claim of age discrimination throughout the company's domestic operations" they were sufficient to support the claims of the 18 plaintiffs in the prior suit who had not themselves filed administrative claims. 918 F.2d at 1059-1060.

On March 6, 2001, plaintiffs in the *Freeman* case in Florida filed an Amended Complaint, adding plaintiffs Kubicki, Lewis, McQuillan, Moncalieri, Nelson, Tucker and others to the *Freeman* case. Deft. Ex. 7, Docket # 112. That Amended Complaint was filed while the *Freeman* case was pending on appeal, and before any answer was filed by defendant Federal Express Corporation. Deft. Ex. 7. Those six Plaintiffs and the original plaintiff had a right to file an amended pleading once as a matter of course "before a responsive pleading is filed." Rule 15(a), Fed. R. Civ. P. Moreover, the district court in the *Freeman* case had entered orders expressly extending the time for filing an amended complaint to replace the verbose complaint "that the court had dismissed without prejudice on Sept. 25, 2000. Deft. Ex. 7, Docket #s 103 and 104. Their claim therefore related back to October 26, 1999, the date of the filing of the *Freeman* suit. Rule 15(c), Fed. R. Civ. P.

The first Amended Complaint placed Federal Express in March, 2001 on further notice of the claims of seven of the plaintiffs in this case that the nationwide pattern of behavior was continuing. Federal Express had been placed on notice of those allegations at least from June 1996. Accordingly, Federal Express was on continuous notice at least since June, 1996 of the allegations of a nationwide pattern of discriminatory practices against older couriers, at least until the district court in *Freeman* granted defendant's motion to

terminate that case administratively on March 28, 2002. Docket # 129. Accord: *Burnette v. N.Y. Central R. Co.*, 380 U.S. 424, 428-434 (1965).

The charges of Robertson and Kennedy were sufficient to continue that notice for all plaintiffs from 2000 through that notice until this case was filed on April 29, 2002, because the charges were filed in 2000 and 2001 and before any right to sue letter was received by them. In any event any defense by the defendant based upon failure to file this suit in a timely fashion is an affirmative defense, in which the defendant has the burden of proof. Accordingly, resolution of that issue should be deferred until after the parties have had the opportunity to conduct discovery.

CONCLUSION

For the reasons set forth above, the motion should be granted, and this Court should enter an Order of the kind submitted herewith, vacating the Order of Oct. 9, 2002, and denying the motion to dismiss.

Respectfully submitted,

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October 23, 2002.

UNITED STATES OF DISTRICT COURT
Southern District of New York

Case No.:02-cv-3355(LMM)

[Filed November 6, 2002]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Thompics, individually and on behalf of others similarly situated, Plaintiff,	)
v.	)
FEDERAL EXPRESS CORPORATION, Defendant.	)

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION TO ALTER AND AMEND THE MEMORANDUM AND ORDER OF OCTOBER 9, 2002

Defendant Federal Express Corp. submits this Memorandum in Response to Plaintiffs' Motion to Alter and Amend the Memorandum and Order of this Court dismissing Plaintiffs' claims in their entirety with prejudice. Plaintiffs' motion is brought pursuant to Fed. R. Civ. Proc. 59(e). As set forth herein, Plaintiffs' motion should be denied.

1. Standards Applicable to a Motion to Reconsider under Rule 59(e).

The standard for granting a motion for reconsideration uuder Rule 59(e) is strict, and such a motion will generally be denied unless the moving party can point to controlling decisions or data that the Court overlooked – matters that might reasonably be expected to alter the conclusion reached by the court. *Rmed Int'l. Inc. v. Sloan's Supermarkets, Inc.*, 207 F. Supp. 2d 292, 295 (S.D.N.Y. 2002), citing *Shrader v. CSX Transp. Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). A motion for reconsideration is not to be used as a substitute for an appeal. *Rmed Int'l*, 207 F. Supp. 2dl at 292, *citing Morales v. Quintiles Transnat'l Corp.*, 25 F. Supp. 2d 369, 372 (S.D.N.Y. 1998). Under local rule 6.3 of the United States District Court for the Southern District of New York, a motion for reconsideration should be narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the Court. *Rmed Int'l*, 207 F. Supp. 2d at 296.

2. The Decision in *Edelman v. Lynchburg College* is inapplicable.

Plainiiffs first claim that the Court overlooked the Supreme Court's decision in, *Edelman v. Lynchburg College*, 122 S. Ct. 1145 (2002), by holding that the intake questionnaires and affidavits presented by Kennedy and Robertson cannot constitute charges for purposes of the single filing rule. In their focus on *Edelman*, Plaintiffs persist in their refusal to acknowledge that the issue in the instant case is the single filing rule, i.e. whether a filed charge can serve as as the basis for piggybacking by non charge-filing

plaintiffs.[1] *Edelman* concerned whether a charging party's affidavit and questionnaire can serve as an individual charge of discrimination for purposes of satisfying the time limits applicable to filing an individual charge. Accordingly, there was no reason for this Court to cite the *Edelman* decision in its order granting FedEx's motion to dismiss.

Even though the Court rightly did not cite *Edelman* in its order, the Court did in fact consider and reject the proposition that Plaintiffs advanced by citing *Edelman*. By arguing that the intake questionnaires constituted charges, Plaintiffs ask the Court to leap to the unsupported conclusion that the notification purposes underlying the single filing rule have been served. As set forth in the following language from this Court's decision, the Court explicitly considered and flatly rejected Plaintiffs' theory:

> While it is true that on occasion, courts have found that an intake questionnaire constitutes a formal charge, [citations omitted], these cases involved situations where the plaintiff had been led by the EEOC to believe that the questionnaire alone constituted sufficient notice to the EEOC of the alleged discrimination. Such is not the case here. Therefore, the Court finds that Kennedy's

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[1] For example, Plaintiffs continue to harp on the language contained in Kennedy's intake questiotmaire that was never served on FedEx, and ignore the fact that her charge was not filed until after this litigation had commenced. (Pl. memo, p. 4). Because it is undisputed that FedEx never received such documents prior to this litigation, there was never an opportunity to conciliate, and the Court rightly dismissed Plaintiffs' complaint as a result. Accordingly, the content of the affidavits and questionnaires is wholly impertinent to this matter.

> questionnaire and affidavit should not be considered the equivalent of a charge...

(Memoradum and order, p. 9). The Court clearly did not "overlook" any binding authority on this issue; rather, it simply did not interpret otherwise irrelevant cases in the unjustifiably broad manner in which Plaintiffs suggested it should. Plaintiffs' request for reconsideration is thus nothing more than an improper and thinly-veiled appeal of this Court's ruling, and should be denied by the Court. *Rmed Int'l, Inc. v. Sloan's Supermarkets, Inc.*, 207 F. Supp. 2d 292, 295 (S.D.N.Y. 2002).

FedEx reiterates that it does not dispute that intake questionnaires can in limited circumstances serve as charges, and that it does not challenge either the holding in *Edelman* or the validity of the EEOC regulation to which Plaintiffs devote a significant portion of their memo. (Pl. memo, pp. 4 - 7). Again, however, the EEOC regulation is unrelated to the single filing rule, and does not state that a confidential intake questionnaire can serve to place a charged party on notice of the claims against it for purposes of the single filing rule. Plaintiffs have not pointed to any decision - and FedEx is unaware of any - in which a Court has held that a confidential intake questionnaire can serve as the basis to allow non-charge filing plaintiffs to piggyback into subsequent litigation founded on claims contained in the questionnaire, but which the, defendant never had the opportunity to conciliate. If FedEx had moved to dismiss an individml lawsuit filed by either Robertson or Kennedy on the grounds that neither had filed an EEOC charge within 300 days after a discrete event, both would have valid arguments, provided their affidavits had been submitted to the EEOC within that 300-day time frame. Such was not the case here. Rather, FedEx moved to dismiss because neither Robertson's nor Kennedy's charge

could serve as the basis on which they or any other plaintiffs could maintain this collective action against FedEx.

Plaintiffs' focus on the *Freeman* charges is likewise misplaced. Plaintiffs again cite the language contained in affidavits and questionnaires that were never served on FedEx. (Pl. memo, p. 7). The Court correctly focused on the proper issue – the fact that none of the documents served on FedEx prior to litigation gave any indication that the grievance affected a group of individuals. (Order and memorandum, p. 11). Again, nothing was "overlooked" by the Court, as is required for the granting of a Rule 59(e) motion. Rather, Plaintiffs are simply unhappy with the Court's correct application of the law. Regardless of whether the Court distinguished an irrelevant Supreme Court decision by name, the Court's order is clear in its consideration and rejection of the arguments proffered by Plaintiffs.

2. Plaintiffs' continuing violation argument was not raised in its response to Defendant's motion.

Plaintiffs next argue that the fact that they alleged in their complaint that FedEx maintains a pattern or practice of age discrimination should allow charging parties to wait as long as six to eight years to file a charge of discrimination. However, this argument was not raised in response to Defendant's motion to dismiss, and is accordingly not appropriate for consideration in a motion to reconsider. On pages 5 and 6 of Defendant's original memorandum in support of its motion to dismiss, Defendant pointed out that the two charges which were filed prior to the time this litigation commenced (by Robertson and McQuillan) were not filed within 300 days of the allegedly discriminatory acts being challenged by Plaintiffs. Plaintiffs did not respond to this argument in their response to Defendant's motion to

dismiss. Rather, Plaintiffs claimed only that persons employed in the 300-day period prior to Patricia Kennedy's May 30, 2002 charge were entitled to participate in the action under a continuing violation theory. (Pl. memo in response to Defendant's motion to dismiss, p. 12). Because Plaintiffs did not originally respond with respect to either Robertson or McQuillan, Plaintiffs are precluded from raising the issue for the first time on a motion to reconsider. *Bank Leumi Trust Co. v. Istim, Inc.*, 902 F.Supp. 46, 48 (S.D.N.Y. 1995) (noting that local rule 6.3 precludes, a party from advancing new facts, issues or arguments not previously presented to the Court). In addition, the 300-day period prior to Kennedy's May 30, 2002 charge does not extend back to 1994. Accordingly, not only was Kennedy's charge late in that it was filed after this litigation, it was filed eight years after implementation of the policies she challenged.

The statement in Plaintiffs' memo that Robertson could not have filed a charge to challenge his termination on the date he was terminated highlights Plaintiffs' failure to grasp the issue in this case. (Pl. memo, p. 10). Robertson in fact did file a charge to challenge his termination on December 1, 2000 – well within 300 days of his being terminated. FedEx did not and does not challenge the timeliness of that charge alleging only individual discrimination against Robertson. Robertson was certainly entitled to sue FedEx for individual discrimination within 90 days of his receipt of the notice of right to sue issued on that charge – whatever that date may have been.[2] Robertson elected not to file such a suit. The fact

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[2] As set forth in Defendant's reply memorandum, there are no factual issues relating to when Robertson received his notice of right to sue. (Pl. memo, p. 10, fn. 3). Regardless of when he received the notice on his individual claims of discrimination, however, it is undisputed that Robertson has never filed a charge or

that Robertson filed an individual charge relating to his termination in 2000 does not entitle him – or anyone else – to file either a charge or a lawsuit challenging a policy implemented by FedEx six years earlier. Statutes of limitation exist for the precise reason of precluding such stale claims. Accordingly, he is not entitled to sue FedEx for class-wide age discrimination based on policies implemented by FedEx in 1994, and this Court correctly so held.

3. The Court correctly ruled that Tolliver v. Xerox mandates dismissal of this action.

In heading 3 of their Complaint, Plaintiffs insinuate that this Court did not follow *Tolliver v. Xerox Corp.*, 918 F.2d 1052 (2d Cir. 1990). (Pl. memo, p. 10). Plaintiffs of course ignore the primary reason that this Court prominently cited *Tolliver* – for the proposition that the charge served on the employer must contain some indication that the grievance affects a group of individuals defined broadly enough to include those who seek to piggyback on the claim. (Memorandum and order, p. 7). Plaintiffs then attempt to infer that the Court only cited *Tolliver* to distinguish it from the instant litigation, once again ignoring the central issue in the case.[3] Plaintiffs further attempt to convince the Court that

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received a notice of right to sue alleging the claims he advances in this litigation.

[3] Plaintiffs' statement at the outset of section 3 of their memo is simply inaccurate. (Pl. memo, p. 10). This Court held under *Tolliver* that FedEx had not been placed on notice of the class-wide nature of the claims against it due to the lack of sufficient language in Plaintiffs' charges. (Memorandum and order, p. 7-8). Plaintiffs' statement that the Court only distinguished *Tolliver* from *Freeman* because the *Freeman* court never certified a class and because the

they were indeed members of the original *Freeman* litigation, despite the fact that this Court has already noted that *Freeman* had been dismissed at the time they sought to join. (Memorandum and order, p. 12). As part of this effort, Plaintiffs resort to an argument that qualifies as bizarre even in this litigation. They assert that a party should be entitled to amend a complaint under F.R.C.P. 15 after the complaint has already been dismissed, so long as the defendant did not file an answer prior to dismissal (ignoring the fact that the complaint was dismissed on defendant's motion). (Pl. memo, p. 11). If the Court indeed overlooked this argument, it was surely based on its desire not to waste judicial resources in addressing such an assertion. In short, the Court correctly applied *Tolliver* in holding that Plaintiffs cannot point to any charge sufficient to support piggybacking. Plaintiffs' attempt to select piecemeal portions of the Court's holding with which they disagree should therefore be disregarded.

Lastly, Plaintiffs argue without citation to any authority that they should be allowed discovery on the defense that the lawsuit is untimely. (Pl. memo, p. 12). Once again, this argument is presented for the first time in Plaintiffs' motion to reconsider, and was not raised in response to Defendant's motion to dismiss. Accordingly, it should not now be considered for the first time by the Court. *Bank Leumi Trust Co. v. Istim, Inc.*, 902 F.Supp. 46, 48 (S.D.N.Y. 1995).

Even if the Court were to consider Plaintiffs' argument, their assertion that Defendant has not conclusively proved their claims to be untimely is simply incorrect. Plaintiffs have not attacked any of the factual assertions made by Defendant; rather, they have asked the Court to apply unrelated legal

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additional plaintiffs did not timely join the *Freeman* litigation is therefore misleading at best.

precedent in an effort to support their case. Because the facts regarding the timeliness of the lawsuit are not in dispute, i.e. when charges were filed, when affidavits and intake questionnaires were filed and the content of the same, and when the various lawsuits were filed and dismissed, discovery is unwarranted. *See Pani v. Empire Blue Cross Blue Shield*, 152 F.3d 67 (2d Cir. 1998) (an affirmative defense may be raised by pre-answer motion to dismiss under Rule 12(b)(6) "without resort to summary judgment procedure if the defense appears on the face of the complaint); *Wujinn Nanxiashu Secant Factory v. Ti-Well Int'l*, 2002 U.S. Dist. LEXIS 9615 at *7 (S.D.N.Y. May 29, 2002) (copy attached) (parties are entitled to discovery if the defense is fact-sensitive).

CONCLUSION

Plaintiffs' motion is actually nothing more than an appeal of the Court's order in which Plaintiffs make "repetitive arguments on issues that have been considered fully by the Court." *Rmed Int'l*, 207 F. Supp. 2d at 296. Plaintiffs cannot point to any decisions or data that might reasonably be expected to alter the Court's conclusion. *Id.* Accordingly, this Court was correct to dismiss Plaintiffs' Complaint in its entirety, and Plaintiffs' Motionto Reconsider should be denied.

Dated: November 6, 2002

Respectfully submitted,

By:

/s/

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 02-CV-3355

[Filed May 4, 2004]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Trompics, individually and on behalf of all others similarly situated, Plaintiff,	)
v.	)
Federal Express Corporation, Defendant.	)

MARGINAL ENTRY ORDER

Motion Denied. So Ordered.

/s/ Judge Lawrence M. McKenna
USDJ 5/4/04

NOTICE OF MOTION AND MOTION TO ALTER OR AMEND THE MEMORANDUM AND ORDER OF OCTOBER 9, 2002

PLEASE TAKE NOTICE THAT plaintiffs, by their attorneys, move under Rule 59(e), Fed. R. Civ. P., for an

order modifying and vacating the memorandum and order dated October 9, 2002, granting the defendant's motion to dismiss, and dismissing the Complaint, without leave to file an amended complaint or other pleading.

1. This motion is based upon the decision of the Supreme Court in *Edelman v. Lynchburg College*, 122 S. Ct. 1145 (March 19, 2002), on remand, *Edelman v. Lynchburg College*, 300 F.3d 400 (4th Cir. 2002) and the regulations of the EEOC which define what kind of writing constitutes a charge of discrimination. 20 C.F.R. 1601.12(b)(Title VII reg); and 29 C.F.R. 29 C.F.R. 1626(b)(ADEA regs.).

Under the Supreme Court's decisions in *Edelman v. Lynchburg College, supra* and the lawful regulations of the EEOC, the questionnaire and affidavit of Patricia Kennedy was a charge in December, 2001, when received by the EEOC. Compare, Memo. and Order of Oct. 9, 2002 at pages 8-10. Under the lawful regulations, therefore, she filed her charge more than 60 days before filing of this suit. The ruling of this Court at pages 8-10 is therefore inconsistent with the *Edelman* decision, *supra*, and the valid EEOC regulation and should be vacated or altered.

2. This Court ruled in the Memo. and Order that the charges of Robertson and (perhaps) Kennedy were untimely, because they were not filed within 300 days of the commencement of the alleged unlawful discriminatory practices. Memo. at p. 8. However, the Complaint alleges that the age discriminatory practices of Federal Express that commenced in 1994, has followed those practices "each year" since that time, and that they "are the prevailing pattern or practice of Federal Express" and that "Federal Express has continued to follow that pattern or practice to the present..." and that "Unless restrained by order of this Court the

defendant will continue to pursue ...policies and practices alleged in the Complaint." Paras.23, 24 and 30. Each time an older worker is injured by an age discriminatory practice of Federal Express, that worker suffered a wrong "actionable under" the law "regardless of the fact that this pattern was begun" more than 180 or 300 days before the charge was filed *Bazemore v. Friday*, 478 U.S. 385, 395-96 (1986); *National Passenger R. Corp. v. Moragan*, ___ U.S. ___, 122 S. Ct. 2061, 2071 (2002).

3. The Second Circuit has ruled that the opt in procedure applies to actions by individuals as well as to class actions, and that individuals who did not file charges may prosecute another action under the single filing rule, if a charge of a non-party gave notice to EEOC of the employer-wide nature of the allegations. *Tolliver v. Xerox Corp.*, 918 F.2d 1052, 1055-1060 (2d Cir. 1990), *cert. den.* 499 U.S. 983. The district court attempted to distinguish that case on the ground that in that case there was a class certification and then a decertification, while in the *Freeman* case (at issue here) there was no class certification. Memo. at pp. 11-12.

However, the language of reasoning of the Second Circuit in *Tolliver*, *supra*, is incompatible with that distinction, for it expressly recognized that the "opt in" procedures specified in the ADEA are applicable in "individual suits" as well as in class actions, and they permit persons who did not file a charge to bring suit, so long as the EEOC was given notice by an earlier charge. *Tolliver*, *supra*, 918 F.2d at 1057. The district court erred in failing to apply the decision in *Tolliver* to the case at bar.

In any event the defendant has the burden on the affirmative defense of the untimeliness of a charge, and

plaintiffs should be allowed discovery before any such defense is acted upon by this court.

This motion is based upon the allegations of the Complaint, and the exhibits of record. A memorandum of points and authorities and a proposed Order are submitted herewith.

For the reasons set forth above, and set forth more fully in the memorandum of points and authorities in support of this motion, the motion should be granted, and the Court should enter an order of the kind submitted herewith.

Respectfully submitted,

/s/

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October 23, 2002

June 3, 2004

By Federal Express
James M. Parkinson, Clerk
United States District Court for the
Southern District of New York
500 Pearl Street
New York, N.Y. 10007-1312

Re: Holowecki et al. v. Federal Express Corporation
02-Cv-3355 (LMM)

Dear Sir:

Enclosed for filing in this case is a notice of plaintiffs' appeal from the Order of May 4, 2004 entered on May 5, 2004.

Please contact the undersigned if you have any problems or questions. Thank you for your cooperation

Sincerely,

/s/
David L. Rose
Attorney for plaintiffs

Enclosures

cc: Carl Morrison, Esq. (by Fed. Ex.)

UNITED STATES DISTRICT COURT
Southern District of New York

02-CV-3355 (LMM)

[Filed June 4, 2004]

Paul Holowecki, Patricia Kennedy, Donna M. Lewis, Charles Moncalieri, Phyllis Nelson, Andy Kubicki, Elizabeth Tucker, Steven Almendarez, Frank J. Martinez, Kelly L. Martinez, Kevin McQuillan, Kenneth G. Mutchler, George Robertson, and Nancy Trompics, individually and on behalf of all others similarly situated, Plaintiff,	)
v.	)
Federal Express Corporation, Defendant.	)

NOTICE OF APPEAL

Plaintiffs by their attorneys appeal to the U.S. Court of Appeals for the Second Circuit from the Order signed by this Court on May 4, 2004 and entered on May 5, 2004, Docket No. 24, and all prior rulings and any final order or judgment which has been or may be entered based on that Order.

/s/

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David M. Wachtel
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Washington, D.C. 20036
Attorneys for Plaintiffs

TITLE 29. LABOR
CHAPTER 14. AGE DISCRIMINATION IN EMPLOYMENT

29 U.S.C. § 621. Congressional statement of findings and purpose

(a) The Congress hereby finds and declares that--

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

29 U.S.C. § 623. Prohibition of age discrimination

(a) Employer practices. It shall be unlawful for an employer--

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this Act.

* * *

29 U.S.C. § 626. Recordkeeping, investigation, and enforcement

(a) Attendance of witnesses; investigations, inspections, records, and homework regulations. The Equal Employment Opportunity Commission shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this chapter in accordance with the powers and procedures provided in sections 209 and 211 of this title.

(b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion. The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section. Any act prohibited under section 623 of this title shall be deemed to be a prohibited act under section 215 of this title. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be

unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 and 217 of this title: *Provided,* That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Equal Employment Opportunity Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion.

(c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial

(1) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: *Provided*, That the right of any person to bring such action shall terminate upon the commencement of an action by the Equal Employment Opportunity Commission to enforce the right of such employee under this chapter.

(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this chapter, regardless of whether equitable relief is sought by any party in such action.

(d) Filing of charge with Commission; timeliness; conciliation, conference, and persuasion. No civil action may

be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed--

(1) within 180 days after the alleged unlawful practice occurred; or

(2) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

(e) Reliance on administrative rulings; notice of dismissal or termination; civil action after receipt of notice. Section 259 of this title shall apply to actions under this chapter. If a charge filed with the Commission under this chapter is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 630(a) of this title against the respondent named in the charge within 90 days after the date of the receipt of such notice.

(f) Waiver

(1) An individual may not waive any right or claim under this chapter unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum--

(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

(B) the waiver specifically refers to rights or claims arising under this chapter;

(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to--

(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 623 or 633a of this title may not be considered knowing and voluntary unless at a minimum--

(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this chapter. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

29 U.S.C. § 633. Federal-State relationship

(a) Federal action superseding State action. Nothing in this Act shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon

commencement of action under this Act such action shall supersede any State action.

(b) Limitation of Federal action upon commencement of State proceedings. In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided,* That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

TITLE 29 -- LABOR
SUBTITLE B -- REGULATIONS RELATING TO LABOR
CHAPTER XIV -- EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
PART 1626 -- PROCEDURES -- AGE DISCRIMINATION IN EMPLOYMENT ACT

29 C.F.R. § 1626.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity

Commission for carrying out its responsibilities in the administration and enforcement of the Age Discrimination in Employment Act of 1967, as amended.

29 C.F.R. § 1626.3 Other definitions.

For purpose of this part, the term the Act shall mean the Age Discrimination in Employment Act of 1967, as amended; the Commission shall mean the Equal Employment Opportunity Commission or any of its designated representatives; charge shall mean a statement filed with the Commission by or on behalf of an aggrieved person which alleges that the named prospective defendant has engaged in or is about to engage in actions in violation of the Act; complaint shall mean information received from any source, that is not a charge, which alleges that a named prospective defendant has engaged in or is about to engage in actions in violation of the Act; charging party means the person filing a charge; complainant means the person filing a complaint; and respondent means the person named as a prospective defendant in a charge or complaint, or as a result of a Commission-initiated investigation.

29 C.F.R. § 1626.6 Form of charge.

A charge shall be in writing and shall name the prospective respondent and shall generally allege the discriminatory act(s). Charges received in person or by telephone shall be reduced to writing.

29 C.F.R. § 1626.8 Contents of charge; amendment of charge.

(a) In addition to the requirements of § 1626.6, each charge should contain the following:

(1) The full name, address and telephone number of the person making the charge;

(2) The full name and address of the person against whom the charge is made;

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices;

(4) If known, the approximate number of employees of the prospective defendant employer or members of the prospective defendant labor organization.

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge either a written statement or information reduced to writing by the Commission that conforms to the requirements of § 1626.6.

(c) A charge may be amended to clarify or amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A charge that has been so amended shall not again be referred to the appropriate State agency.

29 C.F.R. § 1626.11 Notice of charge.

Upon receipt of a charge, the Commission shall promptly notify the respondent that a charge has been filed.

29 C.F.R. § 1626.12 Conciliation efforts pursuant to section 7(d) of the Act.

Upon receipt of a charge, the Commission shall promptly attempt to eliminate any alleged unlawful practice by informal methods of conciliation, conference and persuasion. Upon failure of such conciliation the Commission will notify the charging party. Such notification enables the charging party or any person aggrieved by the subject matter of the charge to commence action to enforce their rights without waiting for the lapse of 60 days. Notification under this section is not a Notice of Dismissal or Termination under § 1626.17.